IV

SPANISH COLONIZATION

IN THE

SOUTHWEST

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EIGHTH SERIES

IV

SPANISH COLONIZATION
IN THE
SOUTHWEST

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SPANISH COLONIZATION IN THE SOUTHWEST.

Spanish Policy.

The remains of Spanish civilization in the United States are meager and insignificant in comparison with our rich heritage of Germanic institutions. And since the life and spirit of modern progress flow largely from Germanic sources, our laws, our forms of local government, our education and our social life have a direct continuity with these early institutions; wherever we find the vitalizing process of modern civilization, there we recognize the effect of the "liberty born in a German forest," and we may trace the germs of American institutions to "the generous barbarians."

It is not surprising that the study of Germanic institutions in America, as they have come to us through England, has ever been more attractive to the student than that of the fragmentary results of the Spanish occupation of the New World; for indeed the former are the living issues that represent the vital forces of history, and as such they appeal more directly to the positive interests of humanity. But in conceding this, we must always remember that the "generous barbarians" and their worthy descendants owe much for their forms of administration, government and law to the Roman civilization that preceded them; and that wherever the direct descendants of the old Roman civilization have gone they have carried with them the Roman system, a system that will be a subject of study and admiration so long as history is made.

It should be also considered that there are causes which prevent natural development and eminent success, and that these bring their own peculiar lessons in history and politics. Even the relics of departed greatness may invite the attention of the investigator. And at this particular period when the spirit of liberty is awakening the Spanish provinces to renewed life, and on the eve of the quadrennial celebration of Spanish discovery, the institutions of this Romance people have something more than a mere antiquarian interest to us.

All Spanish history is tinged with the high coloring of romance and abounds everywhere in strange paradoxes. A liberty-loving people, the Spanish have produced the worst types of complete absolutism; possessed with an active and progressive spirit, they have been slow to grasp and hold the vital elements of permanent improvement; abounding in magnificent opportunities for gaining and holding power, they were again and again forced to yield to the strength of foreign aggression on account of the internal maladies that consumed them; while popular representation and individual rights, the flowers of early independence, were crushed by the ruthless feet of tyranny and despotism. Among all of the modern nations of Europe, no other had such great opportunities for extending territory, for building and establishing a great empire, as Spain; no other power had such a prestige in the New World. Yet with all of this prestige and means of power, Spain yielded her territory, step by step, and passed from the front rank of the nations of the Old World. The discovery of America, first accomplished under the patronage of the sovereigns of Spain, gave to that nation the first and best right to the territory. In the century succeeding the discovery, Spain became the foremost nation of all Europe, at home and abroad, and had, therefore, a vast advantage in the strife for the possession of the New World. Again, the first adventurers and explorers that overran America were Spaniards; this fact strengthened the claims of the government to the new territory. So rapidly did they explore that within the short

space of seventeen years they had overrun a territory greater by one-third than the whole of Europe. The magnificent gift to Spain, by Pope Alexander VI, of nearly the whole of the western continent, strengthened the Spanish cause; the gift was readily accepted, and Charles V hastened to incorporate it under the crown of Spain forever.

The failure of Spain, under such favorable circumstances, can be largely attributed on the one hand to the management of the home government and on the other to the methods of colonization. There seems to have been at the seat of government an ignorance of wholesome administration or a total disregard of the sources of national prosperity. Consummate shrewdness in war and diplomacy was accompanied by a fatal stupidity in the ordinary affairs of the nation, and bigotry and oppression followed closely on the track of every attempt at enlightenment. The conquest and expulsion of the Saracens lost to Spain her best artisans and laborers; the expulsion of the Jews took away needed capital; the inquisition, like a monster, entrapped the unwary and destroyed the best blood of the nation. It was an instrument to be used alike by priest and king against all who opposed the established order of things.

It was the policy of both Charles and Philip to make Spain the foremost nation of the world, and to establish the unity of the Catholic faith. To this two-fold idea they sacrificed the liberty and the prosperity of the nation. The voice of the people was hushed, and the Cortes, a time-honored institution, was suppressed. The gold that poured into Spain from the Indies did not remain, but passed on to those nations that supported Spain in war, or furnished her citizens with manufactured goods. Heavy taxation had discouraged home industries, and more especially as it fell heavier and heavier on the few remaining tradesmen and agriculturists. The vast estates of the nobles and of the church were exempt from taxation, and they rapidly increased in value. Laborers and peasants were despised and all labor was becoming dishonorable, while all home industry was unprofitable.

Factories closed for the lack of workmen and the soil went without cultivation. Meanwhile other nations saw the situation and hastened to profit by it, and soon all of the foreign and domestic trade, as well as the foreign industries, passed into their hands. Such is a partial picture of Spain at the period of her early colonization in America. Let us see what was the effect of the policy of the mother country on the colonies.

For more than twenty years after the great discovery the explorations by the Spaniards in the New World were carried on by private parties under the sanction of the government, and had for their chief object the search for gold. As far as the discovery of gold was concerned all of these expeditions failed, until Cortes, by an accidental discovery of stores of hoarded wealth, and by bold and daring conquest, reduced exploration to a paying basis and robbery to a science. According to the custom of the times Cortes fitted out his own expedition, with the permission of the Spanish government; but, transcending the orders of the crown, he transformed exploration into conquest, and soon became master of all Mexico, over which he set up a provisional government. He was instructed by Galvaez, acting for the crown, "to observe the conduct befitting a Christian soldier; to prohibit blasphemy, licentiousness and gambling among his men, and on no account to molest the natives, but gently inform them of the glory of God and the Catholic King."[1] Pretending to follow out this instruction, Cortes chose for his banner a red cross on black taffeta, surrounded with the royal arms and embroidered with blue and gold; with the following motto inscribed on the border: "Amici, sequamur crucem, et si nos fidem habemus, vere in hoc signo vincemus."[2] It was with this sentiment that Cortes inspired his men to hope for victory; with this sentiment he attempted to justify his conquest of the

[1] Bancroft, *Mexico*, I, 54.

[2] Icazbalceta, *Documentos para la historia de Mexico*, II, 554.

harmless natives. Behind all this show of piety and pretence of justice there seemed to be an understanding between Cortes and Galvaez, as well as among the men, that licentiousness and plunder were to be their rewards for facing the perils of the expedition. But, enduring hardships and dangers without number, urged on by hopes of plunder and conquest, the adventurers soon extended their explorations to the center of Mexico.

In this early era of exploration and conquest the same plans were followed that were inaugurated in the conquest of the Saracens; the cross and the sword were combined in the work of extending the king's domain. The priest and the soldier went forth to conquest, hand in hand, and while the wolves of Spain were conquering, robbing and plundering the outraged natives, the cowled monk and the barefooted friar were holding out the consolation of the Gospel of Peace to an oppressed people. While the home government pretended to make beneficent laws for the sons of the wilderness, it cared only for the gold obtained from an enslaved people by robbery and forced toil.

The government of Cortes, in Mexico, did not long remain. His enemies worked against him to such an extent that he was superseded by another. The government of Cortes was a loose form of monarchy with no particular policy except to subdue the natives and subvert their system. But, failing to establish the confidence of the home government in his actions in New Spain, Cortes was forbidden to make further conquests, and the chief power was placed in the hands of a viceroy. As far as possible the government of Spanish America was now made a pattern of the home government, and, in fact, the new territory was incorporated into the kingdom of Spain; and in it were instituted the vices and follies of that kingdom. Despotism, fanaticism, and all of the follies of the mother appeared in the most aggravated form in the daughter. Even the horrors of the inquisition found their worst types, and this notorious instrument of torture its most unfortunate

victims, in the New World. There was no judgment and no restraint in its use, and consequently it proved but a horrid instrument of extermination.

The civil system divided the territory into districts and provinces, and over these were appointed governors and deputies with judicial functions. The whole provincial government was subject to the control of the viceroy, who, though receiving authority from the king of Spain, held royal sway in New Spain. The viceroys tried to imitate their sovereign in every way possible: they held court in great state and performed all of the functions of office with great display and pomp. The chief settlements of the country were made in the fertile valleys for the purpose of agriculture or in the mountains for the purpose of working the mines. There were also large grants of land to individuals who carried on the cultivation of the soil by means of the natives; these as fixtures to the land were granted with it. It was quite common to receive a royal grant of land and a certain number of Indians to till it, the recipient being allowed to obtain and control the slaves as best he could. Later, laws were enacted by which the slaves were distributed according to what is known as the *repartimiento* system. Subsequently this system was abolished and the natives were protected to some extent by laws freeing them and forbidding enforced labor. But the early practices were usually adhered to; and the natives, unused to the hard toil of the mines and of the plantations, were rapidly exterminated.

In this early colonial period there were towns planted by a company of individuals who received a grant of land for the purpose and founded each town and established its laws according to royal decrees. The laws for the establishment and control were always made by the home government; but the towns had a municipal independence, as far as their internal control was concerned, although they were subject to the general authority of the provinces and of the viceroy. The towns had their own alcaldes and mayor; but their independ-

ent action was somewhat limited, on account of the nature of the laws made in Spain for their government.[1]

The ecclesiastical system of Spain which was transplanted to the New World modified all forms and practices of government. From the first the religious idea was prominent in the new conquest and settlement, and it continued to increase in importance until the whole territory was under the control of the religious orders. Faulty as their system might be, and ignorant as were many of those who sustained it, the rule of the ecclesiastics is after all the only redeeming feature of the early American policy of Spain. The missionaries, as far as possible, stood between the natives and the Europeans, and shielded the former from the oppression of unjust and rapacious men.[2]

Yet the ecclesiastics not only obtained control of the religious work but had great influence upon the civil government; hence they not infrequently stood in the way of a more rapid development of the country. For the church system in Spanish America was a type of that of old Spain; an expensive system, with the usual pomp and ceremony, with the hierarchy of abbots, bishops and priests and the various other orders. It was through the church that the tithes were collected; but, by the bulls of Alexander VI and Julius II, the revenues derived from this source were made due to the king of Spain and were consequently at his disposal.[3] It is generally conceded that the establishment of so great a number of monasteries in a new country, where it was important that the population should be rapidly increased and that all available labor-power be utilized, was, upon the whole, a great hindrance to the development of the country

[1] When Spain first took possession of America a greater part of the territory was parceled out among the settlers and conquerors, much of which subsequently reverted to the crown. (Robertson, III, 276; *Recopilacion*, VI, VIII, 48).

[2] Burke, *European Settlements*, I, 164.

[3] Robertson, III, 282.

besides being a heavy drain upon the wealth of the land. The great power placed in the hands of the ecclesiastics was not always used for the best interests of the country nor for the glory of God; although it may be said that the laws established by the central government for the control and protection of the natives were the wisest of any ever recorded for treatment of an inferior race in a conquered territory by the conquerors.[1] Passing from the general outline of the policy of Spain in the American colonies, let us examine more especially the institutions of this nation which were developed in the Old World and established in the New, and investigate the customs and the methods of procedure in colonization and settlement.

Comparative Colonization.

The Spanish colonies resembled somewhat the Roman provincial colonies in the method of their formation and their relation to the mother country, although they differed greatly from these in their actual life. There was sufficient resemblance between the two to establish the origin of the Spanish colonies as Roman, and this accords with their historical development. The first provincial colony of Spain, although founded more than sixteen hundred years after the Roman provincial colony, was more Roman than Spanish, for Spain, at the time first-mentioned, had hardly developed a nationality, and the Roman type was stamped indelibly upon institutions of the Spanish race. The Spaniards, like the Romans, considered the lands colonized to be part of the territory of the parent country, and the government of the colony an integral part of the central government.[2] Both nations either displaced the inhabitants already occupying the territory or else attempted to incorporate them into the colony, and hence under the general government. The method of procedure in

[1] Burke, *European Settlements*, I, 76.
[2] Robertson, *History of America*, III, 255.

the foundation of a colony had many marks of similarity in both nations, and the laws for controlling and establishing a colony were the same in both. As to the motives which led to the establishment of colonies, they varied in both countries at different periods of national life. Thus we find in the Roman policy four chief objects of colonization, namely: to people the province with persons of Roman blood; to guard and control a conquered province; to dispose of the surplus population of the city, and to settle the soldiery, whom Rome paid in land and thus removed a dangerous element. In all of these methods of settlement the idea of guarding the frontier was never entirely abandoned.[1] In the Spanish policy, the extension of the king's domain, the establishment of the frontier garrisons, the holding of conquered territory against the encroachments of other nations, the civilization of the natives and the extension of commerce were among the prime objects. Among all of these the promotion of commerce was a constant factor and so prominent was this idea that Spain finally established a commercial monopoly and developed a system different from anything else known among ancients or moderns.[2]

The earliest colonies of Rome were purely military garrisons sent out to occupy the territory, to keep it in subjection and to guard the frontier. Cicero terms the Roman colony of this class, *"Specula populi Romani et propugnaculum."*[3] These colonies were few in number at first and limited to the country of the Sabines and to Latium, but they were soon extended over all Italy. They grew in size and importance as there was need. Six thousand men were sent to Beneventum to guard Campania.[4] These military colonies developed into cities where Roman law and custom prevailed. As Rome continued her conquests beyond the limits of the

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[1] Arnold, *Roman Provincial Administration*, 218.
[2] Robertson, III, 265.
[3] Pro Fonteio, I, 33.
[4] Duruy, II, 488.

peninsula, it became necessary to plant colonies for the sake of retaining her sovereignty over those countries which were only partially subdued. In the Province of Spain there was founded at Italica (Old Seville) a military colony by Scipio's veterans which developed at a later date into a flourishing city, from which Trajan, Hadrian and Theodosius came. Somewhat later in 171 another colony of the same nature was established at Carteia, but as the colony was formed of families of a mixed race it had Latin right only.[1] The Senate had not yet sent citizens to settle in the provinces, and it was not until after the passage of the law of Gracchus (lex Sempronia agraria), which had for its chief object the relief of over-populated Rome and the provision of land for the poor, that any move was made to form colonies of citizens in the provinces.[2] The plan of Caius Gracchus for trans-marine colonies failed during his lifetime, but in after years it was carried out with good results. In 122 B. C. he set out with 6,000 colonists to found a colony at Carthage, which he called Junonia.[3] A burgess town with full Roman rights was established, but during the absence of Caius, influences were brought to bear upon his administration by his enemies which caused the repeal of the land law during the following year, and the new colony was without support of the central government.

The colonists, though disfranchised, continued to claim their holdings, and in later years the colony was in a flourishing condition. This was the first burgess town founded as a colony outside of Italy, although others were begun before this became firmly established. In 118 B. C. the Colonia Narbo Marcius, called Narbonensis, was permanently established in Gaul. In nature and object it partook more of the form of a military outpost than of a civic colony; but it had a burgess population with full Roman rights.[4]

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[1] Duruy, *History of Rome*, II, 217.
[2] Marquardt, *Römische Staatsverwaltung, Alterthümer*, IV, 106.
[3] Mommsen, III, 110, 133; Plutarch, IV, 542; Ihne, IV, 456, 473-4.
[4] Marquardt, *Römische Staatsverwaltung, Alterthümer*, IV, 262.

In the latter part of the first century before Christ foreign colonization was carried on extensively. At this period Cæsar founded many colonies and established not less than 80,000 citizens in the different colonies outside of Rome, many of whom were sent to Spain and Gaul.[1] Augustus continued the colonization so vigorously prosecuted by Julius; the majority of the colonies founded by him were of a military nature and created for the purpose of disposing of the army veterans.[2] Frequently other colonies were formed than those sent out by Rome by admitting the towns of the provinces to the rights and privileges of colonies; although sometimes the inhabitants of the towns were expelled to give room to Roman colonists. And again Roman colonists would be added to the already existing population, and the town would thus receive the rank of a colony.[3] When this was the case dissensions arose, which led to a struggle for supremacy; and this usually ended in giving to the original inhabitants larger privileges, though sometimes it produced results just the opposite. But wherever Rome went, there went the Roman government, and the Roman law and system of administration; and the recognition of provincial towns as far as possible as parts of Rome seems to be a distinct policy. Whether the town was formed on a civil or military basis, it was still a type of old Rome; an integral part of the empire. Even in the founding of the town, Rome was imitated; and municipal life and municipal custom as well as municipal law and administration were taken directly from the parent city.[4] From the moment of the conquest the Romans appropriated all of the royal domain, and frequently part of the common lands and in some instances the whole territory of the conquered, which at once became the Roman domain. The inhabitants were allowed to hold these lands as tenants of the state and were obliged to pay

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[1] Arnold, *Roman Provincial Administration*, 218.
[2] Marquardt, IV, 118. [3] Arnold, 218.
[4] Arnold, 220.

taxes on the land (one-tenth), a personal tax, as well as duties and royalties, and to furnish requisitions when demanded.[1] On the other hand the colonists were Roman citizens and might, if they so desired, go to Rome and exercise their rights as such. They were also free from the tribute on land, but must fill all requisitions in time of war made by the central government. Though the colonists were Roman citizens they could not own the land which they occupied, but held it as a fief from the state. When the officer appointed for the purpose (agrimensor), led out a colony, he chose a tract of land, divided it into squares (centuriæ) of two hundred acres each,[2] which he again divided into smaller ones (sortes), and apportioned with the houses to the colonists according to rank, to be held as a sort of fief of the state. Thus the inequalities of old Rome were transferred to the colonies. At first the method of distribution varied, but it is held that Cæsar established a form for the apportionment of lands in the several colonies.

As to the internal workings of the colony, the Roman right or the Latin right was a meagre affair as far as an independent organization of the municipium was concerned. It received its municipal law from the Roman Senate and its whole form and process of administration were received from the mother country. There were senators or *decuriones*, consuls called *duumvirs*, and censors or *duumviri quinquennales*. But with all of this a certain amount of civil and military power was delegated to local authority, and the towns tended to develop a slight originality in government as the central government at Rome declined.

The provincial system of administration in the Roman government had, during its organization under the Republic, many marks of excellence. It was the policy of the Roman Senate never to destroy people, cities, and institutions, unless it was deemed necessary for the present or future safety of the Re-

[1] Duruy, II, 229.

[2] Arnold, 219.

public. The policy was economic rather than humane; for a depopulated town pays no tribute, and furnishes no men in war. The people conquered were, as a rule, allowed to retain their own religion, their laws, their magistrate, and their public assemblies.[1]

And frequently they were left in possession of a part or all of their lands and revenues. When the country first submitted to Rome, a constitution was given to the people fixing the amount of tribute to be paid and defining their obligations to the new government, and, that order might be the sooner restored, the people were given a new civil code which retained, as far as possible, the old forms of municipal government.[2] By degrees the territory, with its laws and people, was Romanized. The governor was the chief ruler in the province, and municipal authority, except in cases of towns granted special privileges, was reduced to a minimum and the signs of a provincial assembly removed by the policy of "divide et impera."[3]

There was one class of Roman towns formed, by the establishment of garrisons throughout the provinces for the sake of guarding the frontier, which are of historic interest and which, although already alluded to, deserve particular attention. Whenever it became necessary for the protection of the Roman interests or the repression of a warlike people, a chain of fortresses was established along the frontier, or in the heart of the territory of the offending people.[4] But, whether planted on the boundary line of the Roman possessions or in the midst of a disaffected people, the primary object of these garrisons was to protect Rome.

Examples of this garrisoned town are those military settlements founded among the Silures in Britain and the later colonies established by Agricola.[5] Another notable example

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[1] Duruy, II, 27; Tacitus, *Annals*, III, 60-63.
[2] Duruy, II, 229. [3] Arnold, 17.
[4] Tacitus, *Annals*, XIV, 33.
[5] Merivale, *History of Rome*, VI, 30-31.

is the line of fortresses established in Gaul by Cæsar on the boundary of Narbonensis;[1] other familiar examples are the line of presidia in Spain, and the forts along the Danube. The development of towns from these military centres must have been very gradual, the military camp changing first into a village and then into a municipium or a colony.[2] There is but little distinction between these terms; in a general sense they may be used interchangeably, although the colony was of a higher order than the municipium,[3] having been sent out by Rome and having been granted full civil privileges from the start. However, a municipium might become a colony, and in fact a town might partake of the nature of the municipium and of a colony at the same time.[4] It was customary for the camp followers, such as sutlers, settlers and merchants, to pitch their tents outside of the ramparts, where a small community, more or less united, sprang up. If the camp remained in one place for a long time, as was frequently the case, the village grew rapidly and finally became a town with all of the rights, duties and privileges of Roman citizenship attached.

The soldiers usually intermarried with the surrounding people and became attached to the soil, or they brought their families with them and thus became permanent settlers. There were other species of military colonies: first, those that were established by Rome from the beginning, as when a whole army was retired to subdue the country; and secondly, the colonies formed by retired veterans who were given lands in payment for services, or as pensions, and were paid according to their rank. The natures of these colonies differed chiefly in the process of formation; the ceremonies in distribution of land at the foundation of a colony were uniform in all cases. But it is not possible to pursue this subject further than the bare indication of the Roman method of colonization.

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[1] *De Bello Gallico*, VII, 8.

[2] Arnold, 206.

[3] Aulus Gellius, *Noctes Atticae*, XVI, 13.

[4] Duruy, II, 242.

Spain was among the first provinces to receive the Roman civilization, and no other country was more completely Romanized.[1] This early transformation was accomplished by means of colonies, by the system of provincial administration, and by voluntary immigration. In the period immediately following the conquest of Scipio, from the year 196 to 169 B. C., more than 140,000 Italians crossed into the province of Spain.[2] This aided greatly in the infusion of the language, customs, and institutions of the Romans. Along the Mediterranean coast, the indigenous population and that of the Phœnicians was made to conform, under the Republic, to the customs of the ruling people.[3]

Under imperial reign, by means of colonization and the extension of the municipal system throughout the peninsula, Spain was completely Romanized. Under the rule of Augustus there were in all Spain fifty communities with full citizenship; nearly fifty others up to this time had received Latin rights and were, in their internal organization, equal to burgess communities.[4] Some of the earlier towns adopted Roman civilization long before; thus Baetica in the time of Strabo was Roman in custom and speech. On the occasion of the imperial census instituted in 74 A. D. the Emperor Vespasian introduced the Latin municipal organization into the remaining towns of Spain.[5]

Once Romanized, the Spanish people, naturally conservative, retained their adopted language, customs, and system of administration; and these the conquests by Teuton and Saracen did not eradicate. In respect to colonization we find traces of the Roman system as late as the eighteenth century. There was one element in Spanish colonization which did not enter into the early Roman plan, that of the Christian religion; and so strong was this element that it characterized all of the

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[1] Mommsen, *Provinces of the Roman Empire*, I, 78.
[2] Duruy, II, 217.
[3] Mommsen, I, 74.
[4] Mommsen, I, 75.
[5] Marquardt, IV, 258.

undertakings of the Spaniards after the union under Ferdinand and Isabella; from that time on the mission and the presidio were constantly associated.

Not only did the Spaniards send out military colonies to guard the territory but they established missions for the conversion of the natives. They also established civic colonies for the purpose of peopling the land, and to this end held out inducements to settlers. At first a legal fiction was assumed, that the soil by justice and right belonged to the natives, but on a religious basis they were deprived of this right, which was vested, without the consent of the supposed owners, in the crown of Spain. In whatever form the colonization took place, whether of a mission, a presidio or of a civic colony, the colonists were occupying a part of the royal domain and were controlled by the royal government. All colonial powers and policies originated with the king; and from the sovereign flowed all grants of land, because he was sole proprietor of the soil.[1]

The colonists had no rights arising from the situation, there was no political power developed out of popular government; it came from the king. The result of this policy was inevitable: without thought of religious or civil liberty, hampered on every side by the laws of trade and by oppressive taxation, the colonists were but puppets in the show of government. Even the assistance which the home government gave the colonists in the beginning, was of such a nature as to stifle every attempt at self-government or independent development.

As a result of colonization, the Spaniards resembled the Romans in several phases, one of which was the mingling of the blood of the conqueror with that of the conquered, thus producing a new race of people with peculiar traits and habits. The Spaniards, like the Romans, had a complex system of provincial government and departments, all of which were officered by appointments from the home government. This

[1] *Recopilacion de leyes de los Reynos de las Indias*, I, 523.

provincial government was so arranged that direct communication was established with the central government and so diversified that every part could be set to watch every other part and thus prevent federation of towns and independent life. On the contrary, in the attempts to incorporate the conquered people into the general government, it was the policy of Rome to tolerate, as far as possible, existing institutions, while Spain demanded a complete revolution in religion, government, and life, and a complete destruction of all institutions. In both, the character of the colonists was not the best; and, while some adventurers, criminals and gold-seekers came to other colonies, the Spanish colonies had more than a fair proportion of these classes.

The idea of commercial monopoly is at the foundation of all modern national colonization schemes, and Spain, more than any other country, attempted to enforce monopoly by direct governmental control of all trade and commerce. After Europe emerged from the feudal ages, and at the same time modern states were developing, along with the development of new industries there was a great demand for the precious metals, and each nation tried to make them flow into its own territory and to prevent their return, believing that this course of action would lead to wealth.

Spain sought gold directly in the mines of Peru and Mexico, and to her the colonies were valuable and worthy of consideration in proportion as they furnished an abundance of the precious metals. Later, as trade developed between the colonies and the mother country, the latter imposed the severest measures possible for the control of commerce. As the attempt to control the flow of gold and other products of the colonies increased in ardor, the industries of Spain passed to other countries and left her powerless to contend with other nations in the markets of the world, after her short but glorious reign closed. The gold continued for a long time to flow into Spain, but it passed on into other countries containing the industries which fed and clothed the Spanish people. Be-

fore the discovery of America, Spain was a noted manufacturing country; but, by the close of the reign of Philip III, the common commodities in her markets were produced by other countries.[1]

The first great arbitrary measure was the establishment of the Council of the Indies with full control of all affairs in the provinces, whether ecclesiastical, military, civil or commercial.[2] Under the influence of the council everything and everybody were kept in close subjection to the ruling power; legislation was minute and explicit to the smallest shadow of a doubt, while obedience to authority was the great law of being. Through its power the officers of the crown were appointed, and to it all officers of the crown were amenable for their conduct. For the immediate control of trade a special tribunal was created, called the Casa de Contratacion, whose special duty was, besides being a court of judicature, to regulate all intercourse of Spain with the colonies in America.[3] With these two instruments of power in the home government and the vice-royalty and the inquisition in the New World, there was ample opportunity for the exercise of arbitrary power. Nor was that opportunity left unimproved. All vessels were obliged to unload their cargoes at Seville and later at Cadiz; this course concentrated trade and secured a monopoly to a few merchants in Spain, while a few persons by purchasing all of the imports into the colonies had the monopoly of the trade in New Spain.[4] To keep trade firmly under control the government prohibited the cultivation in the colonies of any products that were produced in Spain; such as saffron, tobacco, hemp, olives and grapes. These and other arbitrary measures finally threw Spanish commerce, and other enterprises connected with New Spain, into a decline. But the search for

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[1] Dunham, *History of Spain*, V, 265; Coxe, *Kings of Spain*, III, 517.
[2] *Recapilacion*, libro II, titulo 2, leges 1, 2.
[3] *Recopilacion de leyes de las Indias*, libro IX, titulo 1.
[4] Merivale, *Colonization and Colonies*, 10.

gold, the greed for land, and the love of adventure, had already stimulated the Spaniards to explore large territories: and the home government with its constantly diminishing power found it difficult to secure and hold such vast domains. The result was a lull in conquest until the revival of the nation under Carlos III, about the middle of the eighteenth century.

This monarch brought about a reform in politics and administration; revived industries and trade; established commerce, which was carried on by a new navy, and brought back vigor to national life.[1] The vigor of his administration was felt to the utmost bounds of the provinces, and it was during this revival that the colonization of Alta California was accomplished. Prior to this, exploration and settlement had been constantly extended to the north and west, carried on chiefly by the influence of the religious and the civil authorities combined. After attempting many times to make permanent settlements in the peninsula of California, the civil authorities surrendered the enterprise into the hands of the Jesuits, who succeeded in making a permanent reduction of the country in the early part of the eighteenth century.[2] By the aid of the military and civil authorities they were able to hold their position until 1767, when they were expelled from New Spain and forced to yield their work to the Dominicans and the Franciscans.

This enterprise, together with the explorations of Cabrillo (1542) and Viscaino (1597–1702), opened the way for settlement of Alta California. But long before this was accomplished the present territory of the United States had been penetrated and settled farther to the east in that part of the interior of New Spain, now known as New Mexico and Arizona. The story of the wanderings of Alvar Nunez Cabeza de Vaca, the hero of the Narvaez expedition, is familiar to every

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[1] Coxe, *Memoirs of the Kings of Spain*, III, 517; Dunham, *History of Spain and Portugal*, V, 265.

[2] Venegas, *History of California*, Part III, sec. 1.

one. He and his companions, becoming detached from the main expedition, continued their exploration, returned to the coast, built frail boats and embarked on the gulf in search of the main expedition or the settlements of Mexico; and, having been shipwrecked, Cabeza and his three companions were cast on shore on the west coast of Louisiana, the only survivors of the ill-fated enterprise.[1] Wandering thence they passed through the Indian country and near enough to the pueblos of New Mexico to bring glowing accounts to Mexico of populous and wealthy cities to the far north. The desire to possess this wealthy territory led to the expedition of Coronado for the purpose of exploring and conquering the "Seven Cities of Cibola."[2] The expedition brought trials and hardships, and although populous villages were discovered, the stores of wealth, the real objects of their dreams, were not found; consequently the enterprise was called a failure. Fifty-five years after this expedition the Viceroy of Mexico made a contract with Juan de Oñate for the conquest and settlement of New Mexico.[3] A successful occupation of the territory was effected, but the difficulties in the way of developing the resources of the country were never overcome. The civic colonies and towns were always weak and there were no inducements for persons to settle in a place where there was no market. The missions were soon in a flourishing condition, but the methods of treating the natives led to innumerable troubles, and finally to a revolution and massacre. In the year 1630 the official records show fifty missionaries in the field, ministering to sixty thousand converts, dwelling in ninety pueblos. Notwithstanding this apparent success New Mexico was for seventy years an isolated community of settlers, soldiers, neophytes and Franciscan missionaries, who curbed their desires within the limits of bare subsistence. The colonies were not self-

[1] Winsor, II, 231, J. G. Shea.
[2] Winsor, II, 473–504, H. W. Haynes; Bancroft, XV, 83.
[3] Bancroft, *California*, I, 12.

supporting; the salaries of the missionaries, as well as all agricultural implements, were forwarded from Mexico.[1] There was no thrift, no enterprise; and the settlers, living in the presence of stores of wealth in the mountains, had to maintain a constant warfare with the stubborn Moqui and the fierce Apaches. It was during this period that Sante Fe, the oldest town in the west, and having the oldest church in the United States, was founded. In this territory are many remains of Spanish and Mexican institutions and ruins of the works of the early missionaries and colonists; but their study must be made in another place.[2]

When Spain was awakened from her lethargy, at the time of Carlos III, above referred to, there was a well grounded fear that unless immediate action was taken the claims of the nation to the territory of the northwest could not be maintained. Consequently the king gave orders for the occupation of Alta California.[3]

The whole enterprise was placed under the supervision of Galvaez, the Visitor-General of New Spain. He dispatched two expeditions by land and two by sea, and all were under instructions to found, as soon as possible, missions at San Diego and Monterey and to establish missions at intermediate points. The aims of the project are set forth in the words of Galvaez, who affirms that they are "to extend the dominions of the king, our lord, and to protect the peninsula from the ambitious designs of foreign nations." After many trials and delays attendant upon the necessarily imperfect methods of communication and travel in those times, the expeditions all met at San Diego and founded a presidio and a mission there, and subsequently moved on and occupied Monterey. From this time until the Mexican revolution the Spaniards made constant endeavors to develop and people the country.

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[1] Bancroft, *Cal.*, I, 27.

[2] Winsor, II, 471, *et seq.*

[3] Venegas, Part IV, 213–225.

The Mission System.

The occupation and settlement of Alta California was accomplished by a three-fold plan, involving the civil, religious, and military forces of the government. First, there were established the presidios, or frontier fortresses, to guard the "mark," which finally combined the civil with the military function and developed into military towns; and secondly, the purely civic community, or pueblo, composed of colonists settled on the land; and finally the mission, which was ecclesiastical in its nature, but to be eventually resolved into a civil pueblo. In the colonization of California, the mission must ever hold the front rank, more on account of the zeal and enterprise of those connected with its management, and on account of the amount of the work accomplished, than because of the nature of the settlement. Whereas the State regarded the missions as temporary institutions, the priests, to whom their welfare was entrusted, regarded them as the most important of all the institutions encouraged by the government; and consequently they threw their whole life into the work of civilizing the natives.[1] Whatever the intentions of the government might have been on the subject, it was firmly held by the padres that their work was to be permanent.

It is very interesting to note the coöperation of the civil, ecclesiastical, and military powers, in the settlement of a new country; and these all acting under the express commands of a sovereign nearly five thousand miles away.

The military and the religious forces were used by the State in the consummation of its plans. Although it was often affirmed that the object of Spanish expeditions was to convert the natives, and doubtless it was so intended by at least some of the sovereigns of Spain, yet it was never the prime object of the State.[2] Galvaez was a zealous Christian, and believed

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[1] Venegas, *History of California*, Part III, Section 1.
[2] Bancroft, *Mexico*, III, 409.

heartily in the conversion and civilization of the Indians; but he was also in the service of the king of Spain, and believed that friars were to be made politically useful, and consequently he hastened to secure their services in the conquest of California. On the other hand the relation of the military to the mission was that of protection against hostile invasion. Viewed from the standpoint of the ecclesiastic, the soldiers were sent to guard the missionaries and to build forts to protect them against sudden attack; and consequently soldiers were subordinate to the priests in the process of settlement.[1] This was in part true; for wherever missionaries went a guard was sent to protect them; but this guard was sent by the king or his representative. Beyond the design of protection to the missions was the greater object of guarding the frontier against foreign invasion. The friars, like the soldiers, were to be dismissed from the service of the State when their assistance was no longer needed, and the results of their efforts in the cause of civilization were turned over to the civil authorities.

Prior to the conquest of California, the civil power had relied very largely upon the ecclesiastical in the management of the Indians; although the ecclesiastic was always under the direction of the civil law.[2] In the conquest and settlement of Mexico and South America, the religious orders were found very useful in domesticating the natives, and in controlling the Spanish colonists and soldiery. For this, as well as for other reasons, the extension of the faith was always encouraged by the crown of Spain. The pious sovereigns no doubt desired to improve the conditions of the natives and to save their souls, but there was involved in the process an ever-present idea of advantage to the State. During the early explorations in the New World, the natives received very little consideration, although friars accompanied each expedition to

[1] Venegas, Part III, Section 21.

[2] *Proclamation of Ferdinand VI*, Venegas, III, 21.

administer to the spiritual needs of the Spaniards, and to preach to the natives when opportunity offered. In the year 1522 Friar Melgarejo came from Spain to grant indulgences to Spaniards, on account of their outrageous conduct toward the natives; and on his return he carried a large sum of gold which was lost in the sea.[1] It was not long after this that Father Otando and other friars began in real earnest the work of domesticating and baptizing the Indians, but it was many years before the work was well systematized.

In the early history of the conquest the Indians were made slaves and disposed of at the will of the conqueror; subsequently a general law of the Indies laid a capitation tax on all of the natives, which could be paid by working eighteen months in the mines or on a rancho.[2] In the oldest grants made to proprietors in Hispaniola the Indians were treated as stock on the farm, and the deed of transfer of property declared the number which the proprietor was entitled to treat in this way.[3] After this the natives were treated by what is known as the *repartimiento* system, under which they lived in villages, but were compelled to labor in places assigned them for a given period. The proprietor had a right to their labor but could claim no ownership of their persons.[4] The next legislation in regard to the disposal of the Indians engrafted upon the *repartimiento* the *encomiendas* system. This required that within certain districts the Indians should pay a tribute to the proprietors of that district, which of necessity must be paid in labor, and the lords of the soil were required to give the natives protection. It was a revival of the feudal theory in part, but the relative positions of the contracting parties rendered the tribute sure and the protection doubtful. But with all this apparently wise legislation the

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[1] Bancroft, *Mexico*, II, 175.

[2] *Recopilacion de leyes de los Reynos de las Indias*, libro VI, titulo 8.

[3] Merivale, *Colonies and Colonization*, 279.

[4] Arthur Helps, *Spanish Conquest of America*, Ch. I and II.

condition of the Indian grew worse; he was still at the mercy of the conqueror.

To improve their condition the decrees of the king of Spain instructed the priests to gather the natives into villages and compel them to live in communities.[1] For lands occupied they paid a rent to the proprietor and a personal tax or tribute to the crown. Here they were under the immediate control of the ecclesiastics, but were granted the privilege of electing alcaldes (judges) and regidores (councilmen) of their own race for the control of municipal affairs.[2] But this was a mere show of freedom, for the priests in charge had the power to control this election by-play as they chose.[3] Under this system, and forever afterwards, the natives were treated as legal minors under a trusteeship. The royal decrees so recognized them, and the missionaries, in all their dealings, treated them accordingly. It was a common thing for the padres to call the neophytes their children. This was the outcome of the legal fiction held by the king that the natives had the primary right to the soil; the Indian race was to be retained and to share the soil with the Spanish people, but to be in every way subordinate to them. However well recognized this policy might have been the children of the conquered land usually submitted to the convenience of the conquerors. The race problem of placing a superior and an inferior race upon the same soil and attempting to give them equal rights was then, as now, difficult to solve.

On the other hand the priests and the secular clergy were diligent in the salvation of souls. Thousands were baptized by the friars and taught the rites of the new religion. It is said that in a single year (1537) above 500,000 were baptized,[4] and that the Franciscans baptized, during the first eight years of their active work, not less than 1,000,000.[5] But the

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[1] *Recopilacion*, VI, 3, 1–29.
[2] Humboldt, *Essay on New Spain*, I, 421.
[3] *Ibid.*
[4] Bancroft, *Mex.*, II, 408.
[5] Torquemada, *Monarchia Indiana*, III, 156.

process of civilization was too severe, and the treatment received at the hands of the dominant race too oppressive, to make rapid progress in the arts of civilized life possible, and the numbers of the natives decreased rapidly under the treatment of the conquerors.

The most perfect example of this method of civilizing the natives is that furnished by the Jesuits in Paraguay, where, in the last half of the sixteenth century, they held absolute sway over a large part of the territory.[1] In this tract of land, granted them by the king, untrammeled by government, custom, law and the common nuisance of settlers and adventurers the Jesuits began their state. The Indians were gathered into towns or communal villages called "bourgaden" or reductions, where they were taught the common arts, agriculture and the practice of rearing cattle. In each town were appointed two spiritual guides who baptized the natives, taught them the rights of the Christian faith and religious and moral life in general.

At first all property was held in common, the labor of each person being allotted according to his strength and skill. While the villagers gave over to the community the products of their toil they were in turn fed, clothed and instructed. The chief occupations of the natives were agriculture and the rearing of cattle, but they soon had a sufficient number of skilled artisans to manufacture all of the necessary commodities for the use of the young state, and were consequently economically and commercially independent. For many years these colonies flourished, and there were large stores of surplus grain in the villages, while the plains were covered with herds of cattle.

At the time the territory was ceded to Portugal there were 300,000 families gathered into forty-seven villages or districts.[2] As soon as the families had adopted the elements of modern

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[1] *Documentos para la historia de Mexico*, II, 204.

[2] Burke, *European Settlements in America*, I, 328 *et seq.*

civilization and had shown a capability of independent life they were permitted to hold land in severalty, to call it their own, and to have the right to the product of their own labor. There was an attempt to teach them the elements of self-government by allowing the natives to elect from their number, by ballot, magistrates to represent each district; these, when chosen, were to be subject to the approval of the Jesuits in charge. Here, away from the contaminating influences of modern civilization, was an ideal state, equal to any of the dreams of St. Simon, Fourier or Bellamy. It was successful enough, and the natives were very happy until they came in contact with the natural selfishness and avarice of the European, for it must be understood that while under Spanish authority no stranger was allowed to enter this land unattended by an official of the Jesuits. But here, as elsewhere, the direct contact of the sturdy Europeans with the native race has been productive of disaster to the weaker, and no legislation has been able to protect them. It is worthy of attention that in this, as in all other successful communistic societies, the great mass of the people must be as children before the central authority, and must subscribe to a law of absolute obedience to this central power. This same method was attempted in Mexico, but an attempt to gather the natives into villages failed, and the severe treatment that they received at the hands of the conquerors wasted them away, while the constant contact with the Spaniards prevented the adoption of systematic methods of civilization. Yet we find that certain individuals pursued the same plan elsewhere. Salvatierra carried out the same methods in Lower California,[1] and Serra, the Franciscan, adopted this plan in Mexico prior to his entrance into Upper California, where he continued to follow the same system, with some modifications. It cannot be said that it was the system of the Jesuits, but rather the system

[1] Venegas, Part III, Sec. 11.

founded by the laws of the Indies, but first successfully applied by the Jesuits.

As has been stated, the first colony in Alta California was planted at San Diego, in 1769, as a result of the four expeditions dispatched from Mexico by Visitador Galvaez. The first public exercises, after the arrival of the colonists, were to say mass and erect a cross, and this was done with the usual ceremonies.

At Monterey we find the same order of exercises. Mass was accompanied with the roar of cannon and the rattle of musketry, after which Captain Portola unfurled the Spanish flag and took formal possession of the land in the name of the king.[1] At San Diego and at Monterey a few rude huts were thrown up at first, one of which was used as a church, and the more permanent buildings of the presidios were erected afterwards. As soon as practicable the friars began their missionary labor, and from that time on it was the most important work accomplished in the occupation and settlement of California under Spanish rule. After the occupation of Monterey news was dispatched to Mexico informing the authorities there of the progress of the expeditions. The accomplishment of a plan that had been in the minds of kings and rulers for over two centuries caused great rejoicing in the capital city. The unity of the civil and religious powers in the temporal and spiritual conquest of California is shown in the nature of the celebration that took place in Mexico on the arrival of the news of the grand achievement. The cathedral and church bells rang; a solemn thanksgiving was held in which all of the government dignitaries participated, and a grand reception was given, at which Minister Galvaez and Viceroy Croix received, in the name of the king, the congratulations of the people on account of the conquest. In the midst of this enthusiasm an order was issued for the completion of the plan of conquest and for the founding of five new missions.[2]

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[1] Bancroft, *California*, I, 170.
[2] Bancroft, XVIII, 173.

The usual method of founding a mission in a territory was as follows. After the construction of a few rude huts the missionaries, by a display of banners and pictures, attracted the attention of the natives, and further gained their confidence by gifts of food, trinkets and bits of cloth. A banner with a picture of the Virgin, was among the most powerful attractions held out to the natives; it appealed to their superstitious nature, and when explained to them had a wonderful influence in their control. Little by little the friars induced familiarity and confidence in the natives, who returned each day, bringing companions with them. Finally they were led to listen to the teachings of religion and consented to engage in work about the mission buildings, as long as they were remunerated with food, trinkets and bits of clothing. As soon as possible they were induced to live in huts in or near the mission and to take up the forms of religion and civilization. The rude mission buildings soon gave away to more habitable structures and the products of arts and industries began to accumulate.[1] Prior to the occupation of California by the Europeans the Indians dwelt, more or less, in temporary villages, later called "rancherias," where they had an imperfect government, controlled by chiefs, councils and priests.[2]

It was the custom of the friars to go out frequently from the established mission to these adjacent villages and instruct the Indians, and this resulted in making the surrounding rancherias dependent upon the central mission. From these villages the neophytes of the mission were re-enforced. In later times, after the wild Indians became scarce, predatory excursions were made and the natives were secured by force and brought to the mission for civilization.

It was the policy of Charles V that the Indians should be "induced and compelled" to live in villages, this being considered the only way to civilize them. Minute instructions

[1] Forbes, *History of California*, 42, 56, 199, *et seq.*

[2] Powers, Stephen J., *Aborigines of California; U. S. Geological Survey*, J. W. Powell, 1888. Dwinelle, *History of San Francisco*, 13.

were also given by this monarch for their government in the village.[1] They were to have a priest to administer religious affairs and native alcaldes and regidores for the management of municipal affairs. It was further provided that no Indian should change his residence from one village to another, and that no Spaniard, negro, mestizo or mulatto should live in an Indian village over one day after his arrival, and no person should compel an Indian to serve against his will in the mines or elsewhere. In all of these, and similar provisions, the laws of Spain for the treatment of the natives were, upon the whole, wise and humane. Carlos III granted special privileges to the natives and annulled the laws providing for the repartimiento and the encomienda systems, although it was still the policy of the government to keep them in a condition of perpetual minority. It was upon these and similar laws of the Indies that the practice of treating the natives of California was based, although the method varied in its details.

As soon as a new convert was baptized he was made to feel that he had taken personal vows of service to God, whom the priest represented, and to think that the priest had immediate connection with God. From this time on he was a neophyte and belonged to the mission as a part of its property. As the padre in charge had full control of all of the affairs as well as the property of the mission the relation of the missionary to the neophyte was *in loco parentis*. As far as the individual workings of the missions were concerned there was established a complete form of patriarchal government. If a neophyte escaped from the mission he was summoned back, and if he took no heed of the summons the missionary appealed to the governor who dispatched soldiers to capture him from his tribe and return him to the mission. After his return he was severely flogged. For small offences the neophytes were usually whipped, put in prison or the stocks or else loaded with chains; for capital crimes they were turned over to the

[1] *Recopilacion*, Libro VI, for laws governing *los Indios*.

soldiery, acting under the command of the governor, to undergo more severe punishment.

In the general government of the missions the Viceroy of Mexico was the final arbiter of all disputed points, but the immediate authority and supervision was given to a padre president, who had advisory control of all the missions. As there was a military governor of the entire province in which the mission was located, frequent disputes occurred between the military and ecclesiastics. In each mission were two ecclesiastics; the senior having control of the internal affairs of the mission, and his subordinate, who superintended the construction of buildings, the sowing and harvesting of grain, and the management of the flocks and herds.

It will be seen that by this system the neophyte was politically and economically a slave; the missionary had control of his labor-power and had a legal right to the products of his toil. The law called for Indian magistrates, but the part played by the neophyte in this novel state was exceedingly small. The fathers utilized the leaders of the tribes, "capitans" as they were called, in the control of the natives, and frequently went through the formality of an election in appointing them as mayordomas or overseers, alcaldes or councilmen; but it was indeed a matter of form, for the power all lay with the priest.

The life of the natives at the missions varied with the nature of the friar in charge, but as a rule the tasks were not too heavy. Upon the whole, the life was quite easy enough to those who liked it, although the neophyte found the steady round of duties at the mission far different from that which the wild and reckless habits of his former life had taught him. Under the discipline of the mission he must undergo a ceaseless round of religious, social and industrial duties, which must have been severe indeed to the life that had been accustomed to its freedom and had never toiled except by accident. Much attention was given to religious affairs, and if we may credit the report of explorers, frequently the temporal needs of the natives, who lived in a condition little removed

from the original, were sacrificed for the sake of religious and ceremonial practices.

As the products of the labor of the neophytes were under the control of the friars, and as a large amount of the products were spent in embellishing the churches or were hoarded in the missions, it is evident that much more might have been done to relieve the temporal condition of the natives and consequently to improve their spiritual condition.[1]

At sunrise the angelus summoned all to mass, and from the several departments, directed by the overseers and led by the priest, the neophytes filed into the church to engage, for one hour, in public worship. At the close of the public service breakfast was served and the natives repaired, as directed by the overseers, to the fields or to the workshops, to pursue their various occupations. Seven hours of each day were devoted to labor, two to specific prayer, and the remainder of the time to rest and divine worship. The neglect of religious service was considered a misdemeanor and visited by corporal punishment. The industries of the mission were varied. Apart from the missions were the great ranches where the sheep, cattle and other stock were herded or allowed to roam with the least possible care. These needed attention and were cared for by the natives, under the direction of the overseers of Indian blood. Somewhat nearer the mission were the fields for sowing and the vegetable gardens and the orchards; all of these needed care and hard work. Then the creek or the river must be dammed and the long irrigation ditch built and these must be kept in repair. In seed time, and in harvest, as well as while the crops were growing, there was no lack of toil for the domesticated Indian.

There were other industries carried on. Artisans were sent from Mexico to teach the natives to make saddles and shoes, to work at the forge, to spin and weave, and in fact to teach them all of the common industrial arts. The construction of the

[1] De Mofras, II, 316.

churches, the storehouses and the dwellings required much labor, for stones must be quarried, brick made and dried in the sun and timber hewn and frequently carried a great distance. For all of this the native received food, clothing and instruction. The food of the natives consisted of roasted barley (atole) for the morning meal, which was prepared while mass was progressing, by persons appointed, one from each cabin, as cooks for the time being. The barley was roasted in quantities and further prepared by boiling, but apportioned to the neophytes daily, according to their supposed needs. At noon a more substantial meal was served, composed of vegetables, in addition to the barley preparation.[1] Doubtless the natives were more regularly and better fed than when wild they fed upon the products of the chase, or on roots, herbs and acorns, but it may be doubted that they were better physically under this new life.

The clothing of the natives was always meagre; a coarse cloth was made into blankets and shirts which, with shoes or sandals, made their chief covering, although sometimes a more complete civilian dress was given. When a ship arrived from Spain or Mexico small quantities of fancy goods were distributed among the neophytes.

As for shelter, the first houses of the natives, in their domesticated state, were made of sticks, driven in the ground and covered with straw. They were not far removed from the rude huts in which the natives dwelt prior to their connection with the missions. The sun and air had free play in the loose structures and the inmates suffered much from the effect of the storms of winter, but it was maintained by the fathers that the natives could not be induced to live in better ones and that these structures were more conducive to their health than closely constructed buildings. It was also necessary to burn these houses occasionally in order to free them from vermin, and it cost but little labor to replace hovels. It is to be

[1] Forbes, 219.

noticed, however, that as soon as convenient the natives were given more substantial houses, although the public buildings of necessity had to be remodelled first, and especially the church. In the larger buildings of the mission better apartments were prepared for the females, who were regularly locked up for the night, that they might be properly protected.

Not all of the time of the natives at the mission was occupied in religious ceremonies and the daily routine of toil. The life at the missions was relieved by social hours, in which the neophytes could engage in games or enjoy idleness, as suited their taste. They were very fond of games and music and the padres took advantage of these inclinations to teach them many things in a social way.[1] Besides some innocent games of chance, gambling was learned from the Spaniards and carried to criminal excess.[2] Dancing was a favorite pastime in some of the missions. In their games the Indians resembled grown children in simplicity. We must except gambling, in which, like drinking, they imitated to perfection a class of white men who were anything but childlike. The padres took great pains to teach the domesticated natives music on the violin and other instruments, and as the neophytes were fond of this pastime it helped to spend the evenings more pleasantly, and was especially helpful at divine worship.

Much could be added of interest pertaining to the life at the missions, but the subject will be closed with a quotation from De Mofras describing the mission of San Louis Rey: "The building is a quadrilateral. The church occupies one of its wings; the façade is ornamented with a gallery. The building, raised about ten feet above the soil is two stories in height. The interior is formed by a court. Upon the gallery, which runs around it, are the dormitories of the monks, of the majordomas and of travellers, small workshops, school-rooms and storehouses. The hospitals are situated in the most quiet part of the mission, where the schools are kept.

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[1] La Perouse, II, 224. [2] Forbes, 223.

The young Indian girls dwell in the halls called the monastery, and they themselves are called nuns. They are obliged to be secluded to be secure from outrage by the Indians. Placed under the care of Indian matrons, who are worthy of confidence, they learn to make clothes of wool, cotton and flax and do not leave the monastery until they are old enough to be married. The Indian children mingle in the schools with those of the white colonists. A certain number, chosen among the pupils who display the most intelligence, learn music, chanting, the violin, the flute, the violincello and other instruments. Those who distinguish themselves in the carpenters' shop, at the forge or in agricultural labors are appointed alcaldes or chiefs (overseers) and charged with the direction of a squad of workmen. Before the civil power was substituted for the paternal government of the missionaries the administrative body of each mission consisted of two monks, of whom the elder had charge of the interior and of the religious instructions and the younger of the agricultural works. In order to maintain morals and good order in the missions they employed only so many of the whites as were absolutely necessary, for they knew that their influence was wholly evil, and that an association among them only developed those habits of gambling and drunkenness to which they are unfortunately too much inclined."[1]

The missions were all built upon the same general plan, although they differed very much in regard to convenience, quality, and magnitude of structure. At first the buildings were of the rudest nature conceivable, but these gave way to more substantial structures of stone or brick. The plan of building about a quadrilateral with the buildings opening on an interior court planted with gardens where the trades could be plied in the open air on pleasant days, was universal. The church was the principal building, and upon it was lavished the greater part of the wealth of the primitive

[1] De Mofras, I, 261.

community, and upon it was bestowed the most elaborate work of the padres and their carpenters. The walls of the buildings were thick and substantial. Though the architecture was somewhat clumsy it is to-day a monument of the skill and industry of the padres.

There are traces of the Moorish architecture as modified in Spain after the first expulsion of Moors in the eighth century. The Saracens introduced certain types of architecture which they derived from eastern countries and these types became prominent features of the national architecture of Spain.[1] The Roman was united with these types in their development. This primitive architecture was transplanted to America before the universal introduction of the pointed arch called Gothic; indeed, there are remnants of this Moorish style in the modern architecture of Spain, the Gothic never having completely dominated it.[2] But the old architecture remains in its purest forms in the Spanish provinces, thus following a universal law of development. The remains of the old buildings are full of historic interest, but the historian looks beyond the buildings to the ruins of the institutions represented there, and reflects upon the course of events that wrought a civilization which endured less than a century; upon the nature of the government that existed, failed and passed suddenly away. The buildings are fast crumbling into decay; the natives are scattered, the most of them dead, and soon there will not be a vestige left of the civilization that cost hoards of treasure and many lives, and was an expression of holy zeal and long continued self-denial.

The plan of reducing the country by means of missionaries involved the intention of the government to change, as soon as possible, the missions into pueblos and to replace the missionaries with regular ecclesiastics.[3] This plan had been adopted

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[1] Freeman.

[2] *Del Arte Arabe en España*, par D. Rafael Contreras, 101.

[3] Wm. Cary Jones, *Report on Land Titles in California*, 13.

in Mexico and in other provinces of New Spain, and it was clearly the intention of the government to carry it out in California as soon as practicable. The patriarchal community was to be changed into a civil community, the missionary field was to become a diocese, and the president of the missions to be replaced by a bishop.[1] The mission churches were to become curacies and the communicants of the neighborhood were to become parish worshippers. The monks who had entire charge of the missions having taken vows of poverty and obedience were civilly dead and consequently had no right to property. The missions had no right or title to the land, either by general law or grant, but held an easement or usufruct of the occupied territory. It was supposed that within a period of ten years the Indians would be sufficiently instructed in Christianity and the arts of civilized life to become citizens, and that the missions would become pueblos, all passing under civil jurisdiction.[2]

The plan of secularization of the missions was well understood by the government and the church, and there could be no doubt on any question except that of the time when the natives must be educated in the forms of industry and civil government and prepared for an independent life. The priests were zealous in the instruction of the Indians in the industries and had given to the leading ones more or less independence, but the entire mass of the natives was tending away from independence and self-government toward a species of slavery. They went through the daily round of toil under fear of punishment and allowed the missionaries to think and act for them in all other matters. In fact they were becoming less and less prepared to maintain an independence in contact with a superior race.[3] The plan of secularization also involved the grant of lands to the Indians in severalty, but the church had no power to make such grants.

[1] Dwinelle, 20.

[2] *Opinion of Judge Felch*, Dwinelle, 20: Moses, 9.

[3] Cf. Humboldt, *New Spain*, I, 421.

In choosing the lands for the establishment of the missions the padres had wisely chosen the most fertile and otherwise most favorably located valleys, and soon a line of twenty-one missions extended from San Diego to Point Reyes, occupying all of the most fertile land of the coast. For the mission property included the missions and grounds, the tillable lands, as well as the great pasture fields where the herds of the mission were kept.[1] Thus the claims of one mission touched the claims of another, and as no civil town could be legally founded within five miles of the mission[2] the entire land was exempt from the settlement of Spaniards.

Having lived a long time on the lands which they were accustomed to treat as their own; having accumulated property and having governed with almost absolute sway, the friars, though they owned not a foot of soil, were never ready to give over the property to secular authority without a struggle; consequently they invariably fell back upon the fact that the neophytes were not yet fit to become citizens. The secular clergy and the friars had been at strife on this question for centuries,[3] and many complaints had been entered against the friars by gentes de razon on account of the arbitrary manner in which they strove to control the lands. Finally, to settle the matter, the Spanish Cortes passed a decree on the thirteenth of September, 1813, to the effect that missions which had been founded ten years should be given over to the bishop, without excuse or pretext, in accordance with the laws. The friars might be appointed temporary curates and a certain number might be retained permanently where needed, but the majority must move on to new fields.[4]

By this, the first law respecting secularization in California, the missions were to be transformed into pueblos, the mission lands to be reduced to private ownership and the neophytes

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[1] Bryant, *History of California*, 281.
[2] Bancroft, *California*, II, 399.
[3] *Recopilacion*, IV, V, 6.
[4] Bancroft, *California*, II, 499.

governed by town councils and by civil authorities.[1] The last section of the decree reads as follows: "The religious missionaries shall immediately cease from the government and the administration of the property (haciendas) of said Indians, it being left to the care and election of these (Indians) to appoint among themselves, by means of their ayuntamientos, and with the intervention of the governor, persons to their satisfaction, capable of administering it, distributing the lands and reducing them to private property, agreeably to the decree of the 4th of January, 1813, respecting the reduction of vacant and other lands to private dominions."[2] This decree took effect in portions of Spanish America, but was not officially published in California until January 20th, 1820, and was probably unknown there until its publication. At this time the Viceroy of Mexico published a proclamation which he forwarded to Prefect Payeras and Guardian Lopez, with instructions to comply with the terms of the decree at once, or as soon as demanded by the bishop. This led to a controversy, and with this the matter was dropped for the time.

After the revolution in Mexico the subject was again agitated, the friars continued to resist all encroachments upon the mission lands, although they were coveted by many and although the missions had proved the granaries of the country and the friars had always rendered assistance to the presidios and the pueblos, there was still a feeling that the mission system was antagonistic to the best interests of the country and the government. But the main plea for the secularization was that the Indians were in a state of servitude, and, indeed, in the decrees of secularization, the term "emancipation" was used in reference to the neophytes.

Again, in 1833, the Mexican law declared that the government should proceed to secularize the missions of Upper and Lower California according to principles already laid down.[3]

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[1] Tuthill, *California*, 126.

[2] *Halleck's Report*, 125; *Hall's History of San José*, 430; Dwinelle, 39.

[3] *Halleck's Report*, 148.

Article fifth of these regulations provides that "To every head of a family, and all of those above twenty-one years of age although they have no family, a lot of land, whether irrigable or otherwise, if not exceeding four hundred varas square, nor less than one hundred, shall be given out of the common lands of the missions; and in community a sufficient quantity of land shall be allotted them for watering their cattle; common lands shall be assigned to each pueblo, and when convenient municipal lands also."[1] In accordance with the same instrument one half of all the movable property and personal property was to be divided among the settled neophytes. The Indians were forbidden to sell, burden or alienate, under any pretext, the lands which may be given them, neither might they sell their cattle. In order to carry out this plan of secularization the governor was instructed to appoint commmissioners who should take an inventory of property, lay out land for the Indians and explain to them, with "suavity and patience," the changes about to take place. In the following year the California deputation, in accordance with the Mexican law, established specific regulations for secularization.

From this time on, numerous laws and decrees were passed by the Mexican Congress or by the authorities in California for the secularization of the missions, with a final result of the destruction of the greater part of the mission property. The laws which had for their assumed purpose the conversion of the missions into pueblos "were, after all, executed in such a manner that the so-called secularization of the missions resulted in their plunder and complete ruin and in the demoralization and depression of the Christianized Indians."[2] Whether so intended or not the ruin was complete, and the civilization wrought by the faith and the zeal of sixty years was soon destroyed by the improper legislation of a fickle and revolutionary government. De Mofras states that there were

[1] *Ibid*, 150.

[2] Dwinelle, 54.

30,650 Indians connected with the missions in 1834 and only 4,450 in 1842, and that the property of the missions had declined in like ratio. Of the 424,000 horned cattle in possession of the missions in 1834 there remained only 28,220 in 1842. Other wealth of the missions was squandered in a like ratio. The amount of this wealth was considerable, for in twenty-one missions, extending on a line from San Francisco to San Diego, linking together the most fertile valleys of the coast, there were produced in 1834, 70,000 bushels of wheat and 30,000 bushels of smaller grain; also 100,000 cattle were slaughtered every year, yielding a product of ten dollars per head.[1] The total product of the missions was more than two million dollars, and the valuation of movable stock, aside from the buildings, orchards, vineyards, etc., was, in 1834, not less than three millions. Besides all of this the "Pious Fund" yielded an income of fifty thousand dollars.[2]

Many criticisms are, from time to time, offered on the methods pursued by the Franciscan fathers and the Spanish authorities in their attempts to civilize the Indians, but history records no better work ever accomplished in modern times for an inferior race. Over thirty thousand natives had been domesticated and well started on the road to civilization. They had been brought from the state of savagery, taught to wear clothes and accustomed to a regular life of toil, taught to read and write, instructed in music and trained in the service of the church and practiced in the doctrines of the Christian religion.[3] They were taught the useful trades, and could they have been persuaded to continue, they might, under favorable circumstances, have been self-supporting. But the system rested upon the theory of no contact with other races, and the neophytes were still treated as children.

The Indian was treated too much like a child, too much like a slave, and too little like a man.[4] There had not yet

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[1] De Mofras, I, 321.
[2] Dwinelle, 84.
[3] John C. Doyle, *Cal. Hist. Soc.*, Vol. I.
[4] La Perouse; Bancroft, *Cal.*, I, 436.

been instilled into him the principles of and practice of political and economic independence. Yet a recent visit to Haskell Institute assures me that the United States Government, after experimenting for over a hundred years in the treatment of the Indians, has finally adopted the principal features of a method used by the Franciscans in California over a century ago. They are taught the useful trades, arts and music and instructed in the elements of learning. The late Indian severalty bill also has in it a familiar feature of this old method, as it provides for the ownership of a piece of land by every Indian, which shall be guaranteed as his own.

Civic Colonies.

The purely civic colonies of California were called pueblos to distinguish them from missions or presidios. The term pueblo, in its most extended meaning, may embrace towns of every description, from a hamlet to a city, and consequently might apply equally well to the missions, with their adjacent Indian villages, to the small villages springing up around the presidios, or to the regularly settled colony. However, in its special significance, a pueblo means a corporate town, with certain rights of jurisdiction and administration. In Spain the term lugar was usually applied to towns of this nature, but the Spanish Americans have preferred and persistently used the term pueblo. But the word may be used in several distinct ways, each of which may be entirely correct. In the first place it had a political significance when it was applied to the jurisdiction of all the legal voters within a certain territory; secondly, it applied to the judicial jurisdiction represented by an alcalde of the pueblo, which did not always coincide with the political jurisdiction; and thirdly, the pueblo had a proprietary existence defined by the rights to certain lands given by the grant, and when complete it had a town council (ayuntamiento), composed of councilmen (regidores),

judges (alcaldes) and a mayor.[1] This view gives to the conception of the term a wider signification than that of a mere collection of houses (aldea), its most common signification.

The use of these terms remind us that the origin of this institution, like that of many others in Spanish America, dates from an early period of old Spain. It is quite remarkable that in our so-called Anglo-Saxon nation there should have existed, as late as the present century, so many of the customs and usages of a Romance people, and that there still remain in some of our States vestiges of the laws and judicial procedure of old Spain. Spain has ever been a conservative nation, in spite of frequent revolutions, and her customs and laws have been preserved throughout the centuries, and, like other nations, the best preservation of these laws and customs is found in her colonies.

Not only was Spain the first territory to be fully colonized by Rome but the first to develop the municipal system, the first to allow the communes representation in the general assembly, and the first, in fact, to formulate a code of modern laws. The Spanish commune had its origin in the attempt of the government to repopulate the territory made vacant by the wars against the Saracens, and especially those lands vacated by them.[2] Inducements were held out by the government to settlers to form towns, with certain chartered rights granted to the colonists (pobladores). The first charter granted is said to have been that of the city of Leon in 1020, which recognizes the municipal council as a time-honored institution.[3]

In this charter, and in others of this period, the citizens were granted certain privileges of the succession of property and a right to their own judges, either appointed by a higher authority or elected wholly or in part by the people of the town.[4]

[1] Instructions of the Governor of California in a letter to the Ayuntamiento of Monterey, Jan. 25th, 1836; cf. Dwinelle, 51.

[2] Dunham, *History of Spain and Portugal*, 99.

[3] Hallam, *Middle Ages*, Part II, Chap. II.

[4] Alberto Lista, *Del Regimen en España.*

It is difficult to point out the exact origin of the municipality. It is claimed by some that the Roman municipality was never entirely obliterated by the Teutonic and Arabic invaders and that many of the early colonies of Rome retained their identity and their time-honored rights. Considering the general effect of the Roman law and the Roman government, especially that of the municipality, upon the Northern invaders this is wholly plausible. At a very early period the Spanish pueblo was composed of lords and commoners, but in connection with these were the courts or *companeros* of the king, consisting of the military governors and captains of the army charged with the defence of the country and the re-settlement of the frontier.[1] It is certain that the towns must have made some progress in self-government at an early date, for we find that the towns were granted popular representation in a general assembly about the middle of the twelfth century.[2] The deputies of the towns were represented in the courts of Leon in 1188, and there are references that seem to indicate that this was not the first instance of popular representation.[3]

The establishment of towns with municipal rights and popular representation developed a new branch of the law composed of fueros, that is of chartered rights, of privileges and decrees. The first compilation of these new laws occurred in the famous Siete Partidas, formulated by Alphonso X in 1258, which became, after the succeeding reign, the basis of the common law of Spain and the authority to which were referred all procedures of doubtful character.[4] Although this body of laws was formed of the Code Justinian, the code of the West Goths and the Fueros Real, it represented a body of ancient law and usage that endured throughout all subsequent legislation. Consequently it formed the basis of the royal de-

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[1] *Ibid.*

[2] Popular representation occurred about a century later in France, England, Italy and Germany; cf. Hallam, Part II, Ch. II.

[3] Dunham, IV, 134.

[4] Dunham, IV, 134.

crees made for the settlement and the government of the colonies. Based on this code the kings of Spain, especially Charles V, Philip II, Philip III and Philip IV, made laws and gave decrees for the settlement and government of Spanish America. Not only was the newly colonized territory considered a part of the national domain, but the laws and ordinances for its government were promulgated from the central government. In this, as well as in the idea of peopling and guarding the frontier, the Roman method was closely followed. All details must be reduced to law and pass through a process of administration before any action was taken, nothing was trusted to the needs of the colony arising from peculiarity of situation or from subsequent development.

Nevertheless the Spanish sovereigns endeavored to work out in detail those laws best suited to the supposed condition of the settlers, and in later times they endeavored to consider the exact condition of the colonists before making laws for their control. But it was not until the time of Carlos III that there was any show of liberality on the part of the sovereign in regard to self-government. There was at this time, after two hundred and fifty years of occupancy of the land, evidence of original development, of the modification of the old laws and of provincial independence. But it was very slight, as we find the laws of two and a half centuries being enforced with little modification. The colonies were servile, and as far as administration was concerned, they developed but little vital liberty.

There was, however, one distinct feature of the Spanish American town which separated it from others of its class in the old world—and that was unity. Made after the same pattern the towns and colonies were quite similar. Not so in Europe, for it was not uncommon to find a single province containing towns of every variety, one holding its lands in full proprietary right, another by mere usurpation, another in common with a neighboring lord, and yet another in partnership with a bishop, a church, a convent or a monastery. All

liberty in the towns of old Spain was either purchased or forced from the power of feudal nobility or received directly through chartered rights granted by the sovereign.

There was at least symmetry in the foundation of the rights of the towns of Spain, and this led to the formation of all the towns in the colonies upon the same general type, or at least after special types.[1] This had a tendency to guarantee the rights of the town and to free it from irregularities and exactions. And, as has been already stated, the general laws and regulations governing the province and the provincial town proceeded from the crown, nevertheless the provincial governors were recognized as having special privileges, and their recommendations were frequently followed, and especially so during the latter part of Spanish rule; and under Mexican domination, the provincial governors were recognized as having, to a certain extent, an independent administration.

Although laws for the settlement of the new territories were made by Charles V, the first general system of laws regulating colonization were enacted by Philip II.[2] There were two principal methods set forth in the royal decrees. The first vested the land by proprietary right in the individual, provided that he found a colony after prescribed rules. The second plan granted the land to a company of individuals and reserved to them certain rights as citizens and colonists. The first method allowed the proprietor to settle a town with Spanish colonists by contract, with a town council (ayuntamiento), composed of alcaldes and regidores, and required the proprietor, as a guarantee of the grant, to establish, within a given time stated in the contract, thirty settlers each provided with a house, ten breeding cows, four oxen and additional small stock.[3] The proprietor must procure a priest for the administration of the sacrament and provide a church and

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[1] Dwinelle, 34.

[2] *Recopilacion de leyes de los reynos de las Indias*, II, 19.

[3] *Recopilacion*, Libro IV, Titulo V, ley. 6.

utensils for divine worship. The priest was at first temporarily appointed by the proprietor, but the king reserved the right to make all subsequent appointments. Should the proprietor fail to comply with all the requirements of the law as manifest in his bond, the improvements already made would revert to the king and the proprietor be subjected to an additional fine of one thousand *pesos* of gold; on the other hand, should he succeed in founding the colony according to agreement, he was then entitled to four square leagues of land.

By the second method it was provided that ten married citizens, or more, might form a settlement, with the customary pueblo grant of four leagues of land. They were accorded the common municipal rights and granted the privilege of electing, annually, alcaldes of the ordinary jurisdiction and a common council.[1] This guaranteed to the settlers certain democratic rights, and represents in this respect the type of the true Spanish pueblo. More laws were added to these from time to time, the Spanish sovereigns always giving very explicit instructions to the minutest details of procedure; even so small a matter as sending irons for branding cattle must receive the royal sanction.

The laws for the colonization of California, though based on the laws above referred to, were set forth in regulations proclaimed by Philip de Neve, governor of provincial California in 1779, but did not receive the royal approval until 1781. The first settlement in Alta California had been made ten years prior to this proclamation and several missions and presidios had been founded in the intervening time. These regulations mark the beginning of a new enterprise, that of an attempt to settle the province with Spanish people (*gente de razon*). They represent but little that is new in the law, but are rather a development and explanation of the laws of the Indies. The regulations relate to all departments of the government of the province, but title fourteen treats especially

[1] *Ibid.*, ley. 10.

of political government and colonization. The instructions are set forth clearly and in detail, embracing the methods to be employed in founding colonies and the rules to govern the colonists.[1] In the introduction the governor states that it was desirable to found colonies in California in order "to fulfil the pious intentions of the king" and to secure to his majesty "the dominion of the extensive country which occupies a space of more than two hundred leagues, comprehending the new establishments, the presidios and the respective ports of San Diego, Monterey and San Francisco." Another reason of prime importance was urged, that towns should be established in the interest of the state in order that the people might encourage agriculture, cattle breeding and other branches of industry to such an extent that in a few years the produce of the colonies would be sufficient to supply the garrisons of the presidios. San José had already been founded with this idea in view and another pueblo was contemplated to be peopled with settlers (pobladores) from Sinaloa and Sonora.

In this way it was hoped to obviate the great risks and losses which the royal government might suffer in the transportation of supplies so great a distance. Still another consideration must not be overlooked, namely, the new colonies would supply recruits for the presidio garrisons, and at the same time prove a means of defence to the entire country. The law provided that each poblador, to whom house lots or lands were granted, should be obliged to hold himself "equipped with two horses and a complete saddle, musket and other arms" for the defence of his respective district, subject to the call of the government.[2] It would not be difficult to trace in this grant of land, on consideration that the receiver hold himself in readiness to defend the king's territory, something analogous to the old feudal regime.

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[1] Halleck's *Report*, Ex. Doc. 17; 31st Con., 1st Sess., 134–9; Hall's *History of San José*, 450, *et seq*; Dwinelle's *Colonial History of San Francisco*; Bancroft, *Cal.*, I, 333; *Archives of Cal.*, 732, 762, 746.

[2] *Regulations of de Neve*, XIV, 16.

Prior to the regulations of Neve each settler was entitled to receive one hundred and twenty dollars and food, annually, for the first two years after enlisting as a colonist, and provisions alone for the three following years. At the end of five years he might be put in full possession of the land, provided that all of the conditions had been fulfilled. By the new regulations this law was changed so as to give to each settler one hundred and sixteen dollars and seventeen and a half cents for each of the first two years and sixty dollars per annum for each of the remaining three years. The colonists were to enter upon their possessions at once, their salaries, stipends and rations beginning with the enlistment.[1] But these provisions were a small part of the inducements offered to settlers by the Spanish government. Each settler was entitled to receive a house-lot, a tract of land for cultivation, another for pasture and a loan of sufficient stock and implements to make a comfortable beginning. In addition to these he received two mares, two cows and one calf, two sheep and two goats, all breeding animals; two horses, one cargo mule and one yoke of oxen or steers; one plow point, one spade, (of wood with steel point) one axe, one sickle, one wooden knife, one musket and one leather shield. In addition there were given to the community at large, to be held as town property, the males, corresponding to the total number of cattle of the different kinds distributed to the settlers, and other animals, for the purpose of breeding. The town also had one forge, one anvil, six crowbars, six iron spades, the tools necessary for carpenter and cast work and other necessary tools and utensils.

The implements and stock granted to the settlers were to be repaid within five years, in horses and mules, "fit to be given and received." But the surplus produce of the colonists must be purchased by the government for the use of the presidios, and a certain part of this return must be set aside each year for the payment of the loans.[2] And all of the above regulations

[1] Neve, XIV, 3.

[2] Neve, XIV, 15.

were approved by his majesty the king, according to the laws of the Indies.

In the process of founding the town and laying out the land the instructions were not less explicit. By an ancient law a pueblo grant was four square leagues of land, laid out in the form of a square or an oblong, according to the conditions of the country.[1]

The first point to be established was the plaza, which in an inland town must be laid out in a rectangular form at the center of the town, or in case it was on a river or bay, the plaza was to be located on the water front.[2] Having located the plaza the surveyors proceeded to lay out the town, dividing it into blocks and lots.[3] At the center of the plaza was located the pueblo jail (juzgado), and facing the plaza were the public buildings, the council house, the church, the store rooms, etc., while the remaining frontage was occupied by dwelling-houses.[4] There are traces of these old plazas yet remaining in some of the towns of California, although the majority have been used for public parks or for the location of public buildings. After the location of public buildings, the land composing the remainder of the proposed towns was divided into building lots and granted to the founders (pobladores). The Spanish law provided that each settler should receive a building lot thirty *varas* square, separated by streets of ten *varas* in width between each block of two lots.[5]

However, there were variations in the size of the house lot; thus, the lots of Los Angeles were twenty by forty *varas* and by the Mexican ordinance of 1828 for the colonization of the territories of the Republic, each lot must be one hundred varas square.[6]

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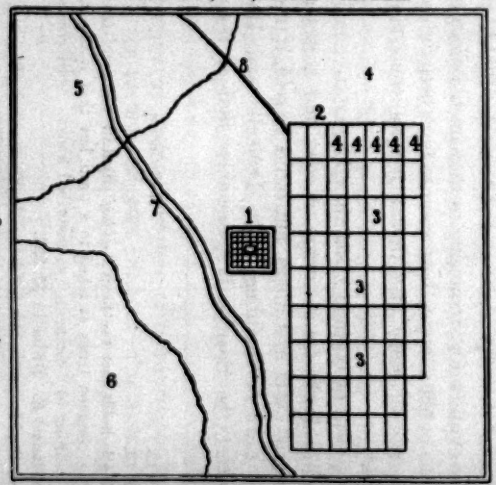
[1] *Recopilacion*, II, 19.
[2] *Recopilacion*, V, IV, 6.
[3] Bancroft, *Central America*, I, 496.
[4] See Figure 1, B.
[5] A *vara* is a Spanish yard of $32\frac{3}{10}$ inches, and is still used as a measure in selling city lots in California towns.
[6] Halleck, Sec. 15, 142.

FIG. 1.—AN IDEAL PUEBLO AFTER THE LAWS OF THE INDIES.

A.

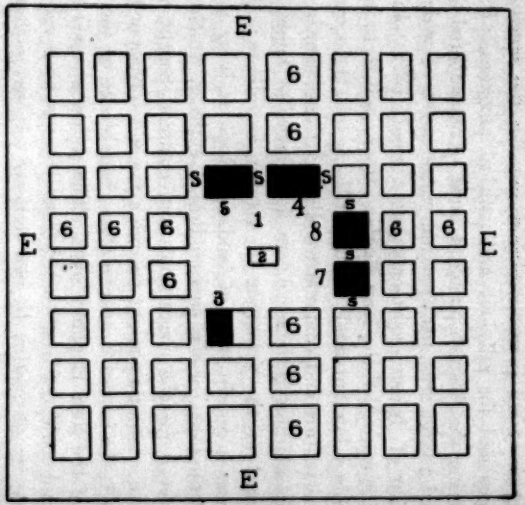
Pueblo Boundary = 10,000 varas = 5.11 miles.

10,000 varas = 3 leagues = 5.11 miles.



A. PUEBLO GRANT.—1 = Town; 2 = Propios; 3 = Suertes; 4 = Realengas; 5 = Common Pasture; 6 = Common Woodland; 7 = River; 8 = Main Irrigation Canal.

B = 1 enlarged.



B. TOWN.—1 = Plaza; 2 = Jail; 3 = Church; 4 = Town House; 5 = Granary, etc.; 6 = Town Lots; 8 = Main Streets to Plaza; E = Ejidos = Commons; 7 = Custom House; 8 = Arsenal.

Thus the town proper was laid out for the erection of dwellings and for religious and political purposes. But in considering the Spanish pueblo it must be remembered that it included a large area, ten thousand varas square, of which the collection of houses represents but a small part. In this respect it resembled the New England town, as it included not only village lots but small farms of tillable soil, the commons, common pasture and common woodland.[1] Consequently there were, in addition to the town lots, five classes of lands to be considered in the formation of a town, as follows: First, there was a certain strip of land, called *ejidos*, lying on one side of the town, or else surrounding it entirely, which must be reserved for the convenience and common benefit of the colonists, where they might pasture a few milch cows or tether a horse.[2] In its use it bears a close resemblance to the commons of the New England town. The *ejidos* belonged to the town and could not be alienated from it except by royal order granting its occupation by new settlers.[3] It seems that this was one method employed to allow the town to expand after all of the lots of the original survey had been taken. Although the laws are explicit in guaranteeing to each pueblo *ejidos* assigned out of the public domain, there seem to have been differences of opinion and of usage at different periods concerning their disposal.[4]

It was held by Gutierrez that the *ejidos* must be maintained as vacant suburbs for pasturage of cows and horses and for ventilation, walks and alleys, but could be sold, if necessary, by the town for building lots.[5] Dwinelle and Hall each assert that the Spanish law resembles that of the ancient

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[1] See Fig. 1 A.

[2] *Recopilacion*, IV, VII, 7, 13, 14.

[3] Ibid, 13.

[4] Dwinelle holds that the term "*ejidos*," used in a general sense, meant all of the common lands attached to a town, but that it also had a particular meaning of "commons," as described above. Gutierrez gives the same explanation. Dwinelle, 32, 337.

[5] Dwinelle, 52.

Hebrews in regard to the "field of the suburbs," which says: "But the field of the suburbs (or pasture lands) of their cities may not be sold for it is their perpetual possession."[1] The situations of the Hebrew commonwealth and the Spanish monarchy were so widely different that little is to be gained by the comparison, although there is a striking resemblance in the law and the usage in both countries. The king of Spain being absolute proprietor of the land in theory and practice, all grants of public lands to towns gave to those towns the full right and title to the lands which the king could not revoke, although he might usurp these rights. Nevertheless, the grant to a town was not equivalent to a grant in fee simple but rather a guarantee of perpetual use. The grants to settlers were of similar nature, and consequently when the king granted the occupation of the lands to settlers it was a transfer of use only, and the king could maintain a right to allow the occupation of these towns by his own decree, although the town could not. Under Mexican rule Gutierrez assigns the right formerly held by the king to the town council.

Within the pueblo, and some distance from the village, were located the arable lands or *suertes* which were granted to the settler for the purposes of agriculture. These grants were provided for in the laws of the Indies to which the regulations of Neve apply more specifically. After the reservations of the land for town lots and for the suburbs were made, all of the remaining land was divided into two classes, the irrigable and the non-irrigable. One-fourth of the lands having been reserved for new settlers and another portion for the town, the remainder was divided among the first founders. If there were sufficient lands to allow it, each poblador received two *suertes* of irrigable land and two of non-irrigable, the latter suitable for pasture or crops without irrigation. As each *suerte* consisted of a lot two hundred *varas* square, every settler received, under favorable circumstances, about twenty-

[1] Dwinelle, 11; Hall, 52; *Leviticus*, XXV, 34.

eight acres of tillable land besides his own lot. All citizens were treated alike in the distribution of lands, and in this the Spanish colony differed from the Roman, in which land was allotted according to the rank of officers and civilians.

The conditions attached to the grants indicate the strong hold the king retained on the lands, for by the laws of the Indies, colonists were forbidden to sell or otherwise alienate their lands until after the fourth year of their occupation;[1] but this law must have been changed, for we find the regulations of 1791 forbidding, under any conditions, the disposal of land by sale. The houses and lands were to remain forever as a perpetual inheritance to the sons and daughters of the colonists, with the exception that the daughters should receive no land unless married to useful colonists who had received no grant. Although the lands were to be kept "indivisable and inalienable forever" the owner of the *suerte* might, if he chose, will it to one son, provided he be a layman. Another precautionary measure asserted that the colonists and their successors could not impose upon the house or parcel of land allotted them, "either tax, entail, reversion, mortgage (censa, vincula fianza, hipotica) or any other burden, although it be for pious purposes." The penalty for failing to comply with this law was the entire forfeiture of the property in question. This law, in part, survived the revolution, for we find in the decree of 1824 that lands shall not be transferred in mortmain.[2]

Among other conditions of grants worthy of notice is that within five years after his first occupation each settler must possess two yoke of oxen, two plows, two points, two hoes and other instruments for tilling the soil, and by the end of three years he must have a house entirely finished and "supplied with six hens and a cock."

The colonists were forbidden to kill any cattle granted them, or their increase, within the first five years, but sheep and goats might be disposed of at the age of four years. The

[1] *Recopilacion*, IV, XII, 1.

[2] Halleck's *Report*, 140.

penalty for the breach of this law was the forfeiture of the amount of a year's rations.[1] The colonists were exempt from the payment of all tithes or any other tax on the products of the lands and cattle given them, provided that within one year from the date of settlement they build a house to live in, construct a dam for irrigation and set out fruit or other trees on the boundaries of their possessions. But the community must complete, during the third year, a store-house to keep the produce of the public sowing, and within the fourth year suitable government buildings. Also from the third to the fifth one almud (one-twelfth of a fanega, or one peck) of corn must be given by each poblador for the sowing of the public lands and these lands must be tilled, the grain harvested and stored by the labor of the settlers. These were forms of municipal taxation and the harvested grain was stored as public revenue. But after the expiration of said term of five years the new pobladores and their descendants will pay, in the acknowledgment of the direct and supreme dominion which belongs to the sovereign, one-half of a fanega[2] of Indian corn for each *suerte* of cultivable land.

The colonists of the civil establishments of California formed in no respect a community where goods and property were held in common, but there were connected with the founding of the towns several characteristics which are marks of the old village community. Within the four square leagues of land included in the pueblo grant there were reserved for sale and permanent occupation a common pasture land and a common woodland which were secured to the settlers by law. The pasture land was necessarily limited, but as it was established by law that each pueblo be located at least five leagues from every other village or settlement, there was sufficient room for the pasturage of the large herds outside of the pueblo limits.[3]

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[1] Neve, Sec. 12.

[2] One bushel; a fanega being about two bushels.

[3] *Recopilacion*, VII, IV, 14.

These lands outside belonged to the king but they could be used by the inhabitants of the town; in fact, the great pasture fields (*dehesas*) were guaranteed to each town.[1] On these the large herds belonging to the inhabitants of the town, usually roamed without any special limits of territory except that of convenience. Other property set apart for the common good of the community was the royal lands (*realengas*); these were devoted to the raising of revenue for the support of the town government. Portions of these were set apart and assigned to the care of the town council and were consequently called "*propios*" or the estates of a city corporation. These lands were to be leased to the highest bidder, for a term not exceeding five years, and the proceeds of the rental were used to defray the city expenses in lieu of taxes.[2] The *ayuntamientos* had full control of these lands and fixed the minimum price of rent and conducted the rental. Not all of the expenses of the town government were met in this way, but sufficient to relieve taxpayers.

The fact of a government, having sole right and title to the land, founding a town in a new country, and reserving a part of the public domain to defray the expenses of city government and thus lessening taxes, appeals to our sense of justice and is a subject for the consideration of the modern political economist.[3] Since it would not be well to free entirely a people from taxation, the above method is a legitimate and rational way of lightening the enormous burdens of taxation that fall upon the people of large cities.

Another very important grant of land was termed a sitio (site), which in its primary legal sense, meant the individual grant of a square league of land. It obtained a general signification as applied to all of those grants of land made to individuals outside of the pueblo for the purpose of rearing

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[1] *Ibid.* [2] Dwinelle, 8, 51.

[3] There is a parallel to this law in the Hebrew custom of reserving certain lands for them that serve the city. *Ezekiel*, 48, 18.

cattle. It is through this process of obtaining land that the extensive Spanish grants in California originated. The sitio gradually increased in size until under Mexican rule the law fixed the maximum grant that might be made to a single person at eleven square leagues of land, or about seventy-one and one-half square miles, or very nearly two legal townships. The regulation of 1824 provided that no person should be allowed to receive a grant of more than one square league of irrigable land, four superficial ones dependent upon the seasons, and six superficial ones for the purpose of rearing cattle.[1]

In 1828 the maximum amount of grants to a single individual was, of irrigable land, two hundred *varas* square, of land dependent upon the seasons, eight hundred *varas* square, and for breeding cattle twelve hundred *varas* square.[2] The legal titles to these Spanish grants have been the source of a great deal of legislation in the California courts.

Having thus outlined the method of colonization as established by law, it remains to give a brief description of the few examples in history of the application of these laws in California. Like all laws, and especially like Spanish laws of the period, we shall find that they were far more exact in theory than in practice. Philip de Neve was governor of Lower California, with a nominal supervision of Upper California prior to the year 1775, when a royal order directed him to take up his residence at Monterey as governor of the province, and Rivera, then at Monterey, to return to Loreto to act as lieutenant-governor.[3] The order was repeated the following year and the change was directed to be made at once. Philip de Neve believed in making permanent settlements of Spanish people (gente de razon) in the province, as the only means of successfully holding the territory against the encroachments of foreign nations. He also had the courage to undertake measures for the encouragement of agriculture,

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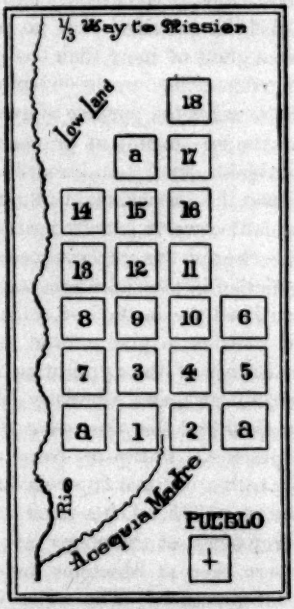
[1] Halleck's *Report*, 139.
[2] Hall, 142.
[3] Bancroft, *California*, I, 307.

commerce and other industries, trusting to receive the royal sanction of his actions. Having resolved to form a pueblo he proceeded to establish San José according to law, and then reported to the Viceroy what had been done, which in turn

FIG. 2.



MAP OF SAN JOSÉ.

Bancroft, *California*, I, 350.

a, a, a, = Realengas. 1, 2, 3, etc. = Suertes.

was communicated to the king and received his royal sanction. In his communication to the Viceroy in 1776, before leaving Loreto, he had recommended the sowing of certain fertile lands for the purpose of increasing government supplies.[1]

[1] Bancroft, *California*, I, 311.

After taking a survey of Alta California he concluded that his object could only be obtained by founding two pueblos, one at Los Angeles and one at San José. He therefore asked the authorities for laborers and necessary supplies for this purpose, but without waiting for a reply he took nine soldiers from the presidio of Monterey who knew something about farming, and with five other settlers proceeded to the Guadalupe river and made an informal settlement of San José in 1777. Five years after Don Pedro Fages, then governor of California, ordered Don José Moraga, lieutenant-commander of San Francisco, to go to San José, and in accordance with the royal regulations, to give in the name of the king, full possession of the lands to the nine pobladores, residents of San José.[1] It would seem from this and the method pursued in the founding of Los Angeles that it was customary to consider the contract with the settlers formally closed after five years of occupancy, when the settlers went into full possession of their rights.

The commissioner placed each settler in formal and legal possession of the soil and located all of the public lands according to his best judgment, always complying with the regulations of Neve.[2] The commissioner chose two witnesses and proceeded with the nine settlers to the land, and in the presence of all located each man's grant. Each title was signed by the two witnesses, and the one to whom the land was granted, and then forwarded to the governor to sign.[3] A copy of the deed was held by the settler and it was properly recorded in the register of the city council or "book of colonization." Each colonist received one house lot, (solar) and four *suertes* for cultivation. Soon after the site for the town had been selected and the land surveyed, houses were constructed for the colonists.

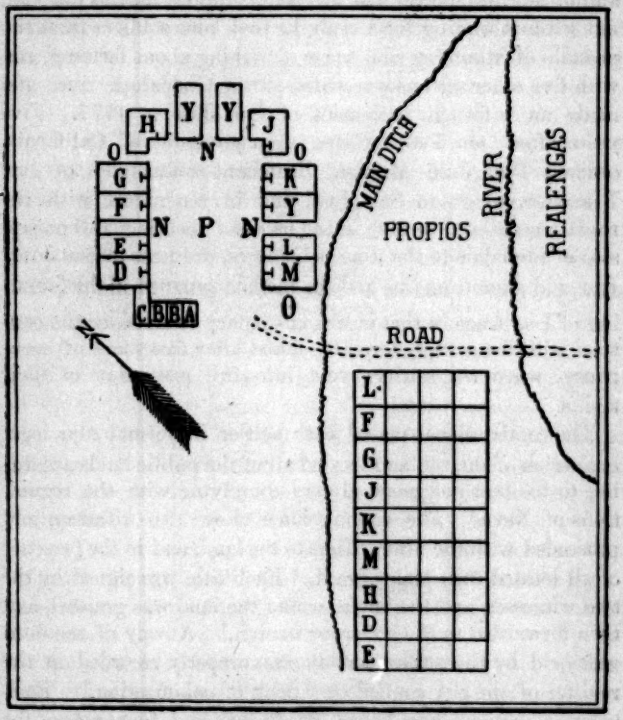
[1] Hall, 25.

[2] The settlement of a colony by a commissioner resembles the Roman method of sending out the colony in charge of the *agrimensor* or of three magistrates. Livy, XXXII, 29.

[3] Hall, 26.

They were at first very rude, being constructed of palisades or posts driven in the ground and plastered with clay and roofed

Fig. 3.



Map of Los Angeles, 1786.

Bancroft, *California*, I, 348.

A = Guard House. C = Troso del posito.
B = Town Houses. D, E, F, etc. = Town Lots (solares).
L, F, G, H, etc. = Suertes.

The map of the pueblo (P) is on a scale five times greater than that of the fields (L, F, G, etc.).

with poles and earth or with tiles. These rude structures were not greatly improved for many years when they gave

away to more substantial dwellings of adobe. It is difficult to realize as one walks the streets of the magnificent modern town of San José that its first foundation was represented by a few inferior mud-bedaubed cabins. After the construction of the houses for shelter, a dam was thrown across the river and ditches constructed for irrigation. The town was situated on an eminence by the river and near it the *ejidos* were laid out fifteen hundred *varas* long and seven hundred *varas* wide. On the other side of the river a tract nineteen hundred and fifty-eight *varas* long was measured for *realengas* and *propios*.

In the foundation of Los Angeles the instructions of Neve reveal several methods of procedure not given in the foundation of other towns. After the selection the next step was to select a suitable place for a dam, before the most suitable lands could be selected for cultivation. The plaza of the town must be two hundred by three hundred feet, and from it two streets open out on each of two opposite sides and three on each of the other two sides.[1] The solares were authorized to be twenty by thirty *varas* and their number equal to the number of available *suertes*. On the east side of the plaza the public lots were reserved for public buildings. In selecting lands the pobladores shared equally as to the number and they cast lots for position, according to an ancient law.[2]

Notwithstanding the liberality and care of the Spanish government to establish colonies the pueblos were not successful. They continued an insignificant existence for a period of nearly twenty years when the question of peopling the country was again agitated, on account of the French, English and American explorations on the Pacific coast. The sudden agitation resulted in a determination to create a new settlement on an improved plan and led to the founding of the villa of Branciforte (Santa Cruz).

The plan of the town of Branciforte partook somewhat of the nature of a presidial pueblo, although the cultivation of

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[1] Bancroft, I, 345.

[2] *Recopilacion*, IV, VII, 7, 13, 14.

the soil and the practice of industries were associated with the defence of the country. It was to be situated on the coast and resembled in design the old Roman military town constructed for the defense of the frontier, but in real existence Branciforte was but a third-rate pueblo. An attempt was made to form a town of a higher class than those already established, consequently the governor requested the Viceroy to send robust country people from temperate or cold climates to engage in farming, and artisans, smiths, carpenters, stonecutters, masons, tailors, tanners, shoemakers, tilemakers and sailors.[1] The inducements held out to the settlers were very favorable. Each civilian was to receive one hundred and sixteen dollars annually for two years and sixty-six dollars annually for the remaining three years, besides a house, live stock and farming implements. Each soldier was to receive a house, a year's pay and a supply of live stock and farming implements. A peculiar feature of the laws for the settlement of Branciforte was the order to grant every alternate house lot to an Indian chief, who, living among citizens, officers and soldiers, would thus become accustomed to civilized life and lead his tribe to adopt the laws and customs of *gente de razon*. This is evidence that the original plan of the Spaniards to unite the two races in the possession of the soil had not yet been abandoned. The greatest difficulty in the way in this particular instance was that there were no Indian chiefs in that locality.

The first colonists were to come from the surplus populations from San José and Los Angeles and subsequently the artisans and soldiers were to arrive. The rules made for the government of the colonists were very fine, indeed. They were enjoined to live in harmony, to refrain from drunkenness, gambling and concubinage.[2] The penalty for neglect to attend mass on holidays was three hours in the stocks; prayer and the rosary must close the day's labor; the annual

[1] Bancroft, *California*, I, 568.

[2] Bancroft, *California*, I, 569.

communion and confessional must be attended and certificates must be forwarded to the governor that these requirements had been met.

It would seem that these liberal inducements and fair prospects would bring an industrious and thrifty class of settlers to found a thriving town, but with all of this the villa was a failure, and the colonists, if not a criminal class, were at least a worthless class. The commandante Guerra, writing to Arrillaga, said that to take a charitable view of the subject, their absence "for a couple of centuries, at a distance of a million of leagues, would prove most beneficial to the province and redound to the service of God and the glory of the king."

There were many things that caused the failure of the civil colonies in California, but none greater than the character of the majority of the colonists. The class of thrifty pioneers seeking homes, so notable in the English colonies of the Atlantic coast, was wanting. Spain had a minimum of this class and they were needed at home. On the other hand, the policy of shipping criminals to a new country was suicidal to the interests of the colonies and to those of the parent country. The colonies on the Atlantic coast had common cause of complaint on account of the same practice, but they were more fortunate than the Spanish colonies in this respect. The majority of the colonists of New England came to build homes, to accumulate property, to engage in industries and to establish civil and religious liberty. A great purpose dominated their entire life and controlled every adventure. Without assistance from the government they wrought out their own destiny by the master-stroke of toil; they were true founders and builders. On the other hand, the Spanish colonists were given lands upon which to build, lands to till, live stock, tools and rations and then paid a salary to occupy territory and live a life of ease and laziness. The close proximity to the domesticated Indians, who could be either hired or forced to work, had a tendency to degrade all labor. Nearly all of the labor was done by the neophytes, who were given a certain per-

centage of the crops for tilling the soil or were hired from the padres at the missions. There were many other difficulties in the way of success; there was no market for produce and but little commerce; the general policy of Spain in the treatment of her colonies was detrimental to the best interests of the provinces. The colonies were for use, and though recognized as an integral part of the kingdom there was a continual process of subordination of the interests of the colonies to the interests of the home government. And all of this was carried on with mistaken notions of advantage. The chief officers controlling the provinces were sent out from Spain by appointment, and they carried with them an abundance of legislation, which always tended to suppress any tendency toward freedom or self-government.[1] The religious orders were first in the field and always zealous and aggressive. They monopolized the products of Indian toil, appropriated the best lands and opposed the civic communities. Under these circumstances of constant discouragement it is little wonder that Spanish colonization was a disappointment and a failure.

The local administration of the provinces was represented by the pueblos which were the units of local government. The decree of Philip II provided that the pobladores of the colony should elect their own magistrates; that is, alcaldes of ordinary jurisdiction and members of a town council.[2] In accordance with this act Philip de Neve, with the approval of Carlos III, provided, that for the good government of the pueblos, the administration of justice, the direction of public works, the distribution of water privileges and carrying into effect the regulations of the governor, they should be furnished with ordinary alcaldes and other municipal officers in proportion to the number of inhabitants. It was provided in this law that the governor should appoint the alcaldes for the first two years, and for each succeeding year the people should

[1] Merivale, 11.

[2] *Recopilacion*, V, III, 12.

elect their own officers. But the regulations of local government in California under Spanish dominion are based upon the provisions of the Spanish Constitution of March 19, 1812, and the decrees of the Cortes in 1812 and 1813.[1] These laws became effective in the departmental and local government of the provinces, but had little authority in California until after the Mexican revolution. It was enacted that every pueblo should be governed by an ayuntamiento, composed of alcaldes, regidores and syndicos, (city attorneys) and that the alcalde should be president of the council, or if there be more than one alcalde the first one elected should be president. Every town, of at least one thousand souls, must establish an ayuntamiento. Each year, in the month of December, the citizens of the pueblo were to meet and choose electors, who should, in the same month, elect the requisite number of officers. The duties of the ayuntamientos were clearly specified. Among other things they were to care for the comfort and health of the people, provide for raising taxes, charities, public highways, the encouragement of agriculture, trade and other industries; in fact, they were to attend to all of the "politico-economic" affairs of the town.[2]

The decrees of the Cortes gave more specific directions for the municipal administration. The ayuntamiento was composed in its simplest form of one alcalde, who was mayor and president of the council, and a limited number of councilmen. Section four of the decree of 1812 asserts that "there shall be one alcalde, two regidores and one *procurador-syndico* (city attorney) in all towns which do not have more than two hundred inhabitants;" in towns having more than two hundred and less than five hundred inhabitants the number of regidores (councilmen) shall be increased to four; in towns having above five hundred and less than one thousand there shall be

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[1] Cf. Moses, *Establishment of Municipal Government in San Francisco*, 12; Hall, 102.

[2] Schubert, *Verfassungs Urkunden*, II, 44, *et seq.*

six councilmen; in towns having over one and less than four thousand inhabitants there shall be two alcaldes, eight councilmen and one *procurador-syndico*, and in the larger towns the number of regidores shall be increased to twelve. In the capitals of the provinces there must be at least twelve regidores, and should they possess over ten thousand inhabitants their number must be sixteen.[1] The official term of an alcalde was one year, the time fixed by Philip II. The term of the city attorney was the same, and that of the councilmen was two years.[2]

The number of electors chosen by the people to elect the town officers were apportioned as follows: Towns having less than one thousand people were entitled to nine electors; those having more than one and less than five thousand were entitled to sixteen, and those having more than five thousand were entitled to sixteen electors. To avoid confusion which might occur in large towns or sparsely settled districts, each parish might choose the number of electors to which it was entitled according to population, at least one elector being allowed to each parish. Small towns, having less than one thousand inhabitants, and in need of town councils, must apply to the Deputation of the Province, which may in turn apply to the governor for permission to establish an ayuntamiento, and all other towns must attach themselves to the nearest ayuntamiento or to the one to which they previously belonged. Thus the pueblo system formed a complete local government.

The above laws remained in force until repealed in 1850. However, changes were made in regard to the basis of population and also in 1837 to the general provincial regulations of towns. This law of 1837 provided that, "the capital of the department, ports with a population of four thousand inhabitants, interior towns of eight thousand inhabitants, towns which

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[1] Section 3, decree of 1812; Hall, 103.

[2] Moses, 13.

had ayuntamientos previous to 1808 and those to whom the right is given by special law shall be entitled to ayuntamientos or town councils."[1] The number of town officers must be determined by the departmental legislation acting in concert with the governor, but the number of alcaldes, regidores and sindicos could not exceed six, twelve and two respectively.[2]

The chief results of the laws of 1837 were to strengthen the central government and to detract from the powers of local government. The province was managed by a governor, a department legislature, prefects, sub-prefects, ayuntamientos, alcaldes and justices of the peace. The ayuntamientos were responsible to the sub-prefects, the sub-prefects to the prefects, and the latter to the governor; and they had charge of the police, health, comfort, ornament, order and security of their respective jurisdictions. Their duties were carefully specified. They were to supervise the food and liquor, to insure its good quality, to care for drainage, hospitals, prisons, etc.

The duties of the alcalde in California were multifarious, although he was of more importance in the local government of old Spain, where he was the chief officer of the local government. But in California he was arbiter of disputes and was in duty bound to settle difficulties and to prevent, if possible, cases coming into court.[3] His function was judicial, in that he tried cases which were subject to appeal to the royal audiences. His duty was also administrative, as he executed the decrees of the governor. Sitting at the head of the council he had to do with the politics and economics of the town, and in addition he combined the function of police judge with those of policeman and constable.[4]

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[1] Sec. 5, Art. I; *Debates in the Convention of California*, Appendix V, Art. III.

[2] Section 5, Art. III.

[3] Cf. *Mining Camps*, Chas. H. Shinn, 83, 104.

[4] *Recopilacion*, V, III, 1, 2.

Presidial Pueblos.

But little space remains for the discussion of the third method of colonization by means of the fortress, but a few of its important features will be represented here. As has been already stated the Spanish presidio is a survival of the old Roman presidium and we find a tendency toward the growth of towns around the fortresses in the Spanish as well as the Roman provinces. Although the object of the Spanish fortress was the same in general as that of the Roman, namely, to people and guard the frontier, yet the employment of priests by the government to carry on a "spiritual conquest" necessitated the establishment of garrisons for the protection of the missionaries.

The part that Christianity played in the settlement of the territory and the civilization of the natives introduces an entirely new element.

There were only four presidios in Alta California prior to the American conquest, and the process of the formation of towns about them was so slow that they figure more as mere bastions of defence than as the centers of towns. Their connection with the missions in protecting the missionaries against the natives caused a constant strife between the soldiers and the priests, and the strong influence of the latter brought to bear upon the garrisons rendered the development of presidial towns very slow. The friars always assumed complete control of everything connected with the colonization and could brook no opposition to their opinions and methods; at first they claimed entire control of spiritual affairs and finally as they grew stronger, they claimed the right of administering the temporalities.[1] They soon claimed all the available pasture land within reach of the missions for their flocks, and resisted any encroachment upon this. They even disputed the right to locate the King's farm, always making the plea that the

[1] Cf. Humboldt, *New Spain*, II, 294.

rights of the natives must be maintained. It was well that the natives had some one to plead their cause, but the friars frequently carried their claims to a ridiculous extent.

At first the presidios, like the missions, were usually temporary structures, but were improved from time to time. Although the Spanish law was very precise and the plans of settling uniform, the slow progress of the Spanish frequently permitted one portion of a fortress to decay while another was being built.[1] The following description of the Spanish presidios, from De Mofras, best shows their nature: "All of the presidios were established on the same plan. Choosing a favorable place, they surrounded it with a ditch twelve feet wide and six feet deep; the earth of the ditch served for the outwork. The enclosure of the presidio was formed by a quadrilateral about six hundred feet square. The rampart, built of brick, was twelve to fifteen feet high by three in thickness; small bastions flanked the angles. Its armament consisted of eight bronze cannon, eight, twelve, and sixteen pounders.

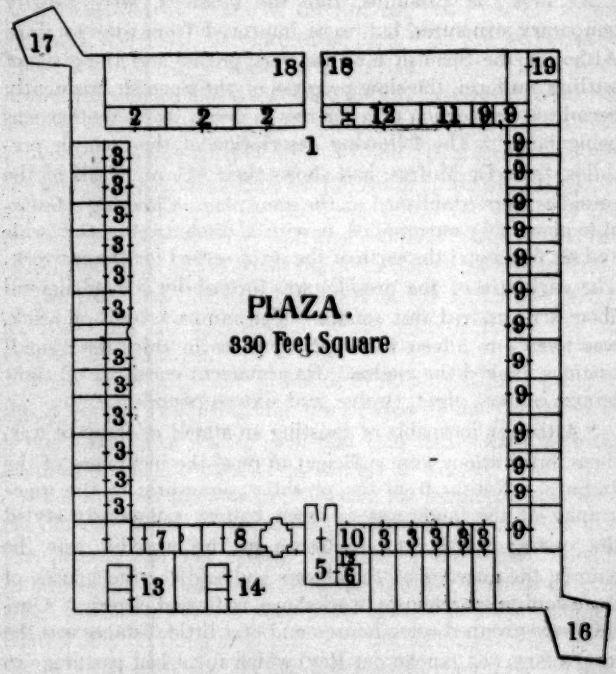
"Although incapable of resisting an attack of ships of war, these fortifications were sufficient to repel the incursions of the Indians. Not far from the presidios, according to the topography of the land, was an open battery pompously styled the castle; within the enclosure of the presidio was the church, the quarters of the officers and soldiers, the houses of the colonists, storehouses, workshops, wells and cisterns. Outside were grouped some houses, and at a little distance was the king's farm (El rancho del Rey) which furnished pasturage to the horses and beasts of burden of the garrison."[2] De Mofras follows with a description of the condition of the soldiery, of their grotesque armor and of the monotonous life of the garrison.

The presidios of Monterey, San Diego, Santa Barbara and San Francisco were centres of presidial or military districts

[1] Cf. *Vancouver's Voyage*, II, 495.
[2] De Mofras, I, 276. See Figure 4.

down to the close of the eighteenth century. A few inhabitants had taken up their residence in the vicinity or in imme-

FIG. 4.



PLAN OF SANTA BARBARA PRESIDIO, 1788.

Bancroft, *California*, I, 464.

1 = Chief entrance.
2 = Store houses.
3 = Family houses.
5 = Church.
6 = Sacristy.
7 = Ensign's quarters.
8 = Commandant's rooms.
9 = Family houses.
10 = Chaplain's rooms.
11 = Sergeant's house.
12 = Guard room.
13 = Corrals, kitchens, etc. (ensign).
14 = " " (commandant).
15 = Chaplain's corral.
16 = Western bastion.
17 = Eastern bastion.
18 = Corrals.

diate connection with the fort, but they occupied for the most part houses outside of the presidial wall. Although the presidio

was entitled to four square leagues of land for the establishment of a presidial pueblo there were few specific instructions for the settlement of the pueblo prior to 1791. Instructions given by Bucareli, Viceroy of Mexico, to the commandant of the presidio empowered him to grant lands to Indians who would devote themselves to agriculture and the breeding of cattle, and to other settlers, lands on the same condition.[1] Settlers must keep themselves armed and in readiness to assist the garrison of the mission in repelling invaders.

This law applies especially to the missions, but might apply to the presidios as well. The first explicit instructions pertaining to the formation of a presidial pueblo were given by Pedro de Nava, general commandant.[2] He authorizes "captains of presidios to grant and distribute house lots and fields to soldiers and citizens who may solicit them to fix their residences on." These lots were to be granted within the extent of four common leagues of land belonging to the presidio; the four leagues were to be measured from the center of the presidio, two leagues in every direction.[3] "There is no clear evidence," says Bancroft, "that any such grants were made."[4]

In 1794 Arrillaga gave permission to several persons to settle temporarily on the Rio de Monterey, from three to five leagues from the presidio. Governor Borica opposed the granting of lands to Spanish settlers, as it could not yet be determined what lands the missions would need, and because it would cause strife between the owners and the rancheria Indians.[5] He therefore recommended that settlers of good character should have permission provisionally to

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[1] Halleck's *Report*, Appendix I.

[2] Dwinelle, 34; Bancroft, *California*, I, 610; Halleck, Appendix 3.

[3] This is a mistake, for two leagues in every direction would make sixteen square leagues. Los Angeles, under this law, claimed sixteen leagues, but the claim was not recognized.

[4] Bancroft, *Cal.*, I, 611. [5] *Ibid.*

occupy the land. However, the soldiers, with their families, and other settlers continued to multiply around the presidios, and small towns sprang up. The number was augmented by pensioned soldiers who settled in the vicinity of the fort. Thus, we find that there were, in 1795, at Santa Barbara, seventeen pensioners, fifty-nine soldiers and two hundred and ninety-four other inhabitants, making three hundred and seventy persons in the population of the presidio. Although there was no *rancho del rey* at Santa Barbara there were four thousand horses and cattle and six hundred sheep, and the yearly product of grain in 1797 was sixteen hundred and fifty fanegas.

Although the presidio of Los Angeles was the first established, those of Monterey, Santa Barbara and San Francisco assumed greater importance. In the early period Monterey was of the greatest importance on account of its being the capital of the province, but subsequent history has developed the greatest interest about San Francisco, a place whose importance the Spaniards were slow to recognize. Prior to the year 1834, San Francisco, including the pueblo, mission, and presidio and all of the settlements, was under the control of the military governor and the commandant of the presidio. A small village or pueblo had grown up between the mission and the presidio.[1] At this time the transition was made from a military to a civil government. The territorial governor, José Figueroa, wrote to the commandant at San Francisco, stating that the territorial council had ordered the partido of San Francisco, which included the government of the peninsula and the adjacent coasts, to proceed at once to elect a constitutional ayuntamiento, composed of one alcalde, two regidores and a sindico, the same to reside at the presidio.[2] Also the civil functions formerly exercised by the commandant should devolve upon the ayuntamiento whose jurisdiction extended over the affairs of the mission, the presidio and the pueblo, the

[1] Moses, 18.

[2] Moses, 18.

commandant being limited to the military command alone.[1] Here, then, is a clear example of the conversion of a presidio into a civil pueblo according to law. There is one other famous record of the same method in what is known as the "Plan of Pitic," a royal order executed in 1789 for the formation of the town of Pitic in Sonora, Mexico, by the union of a presidio and a pueblo. This plan of Pitic furnished not only an example of the transition of a presidio into a presidial pueblo, with a limited jurisdiction to the military power, but it gave a plan for the formation of other newly projected towns. After this plan were founded the pueblos of Santa Barbara, San Francisco, and Monterey,[2] whose history, though very interesting, we cannot continue at present.

[1] Dwinelle, 48.

[2] Dwinelle, 31.